B3480-1.5-F

THE FIGGIE REPORT PART V: PAROLE—
A SEARCH FOR JUSTICE AND SAFETY

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For further information about The Figgie Reports please contact: Figgie International Inc., 1000 Virginia Center Parkway, Richmond, VA 23295. (804) 264-5630

ADVISORY PANEL

The Honorable Stanley H. Fuld
Kaye, Scholar, Fierman, Haye and Handler
New York, New York

Peter Hoffman
Research Director
U.S. Parole Commission

Larry L. Linke
Corrections Specialist
U.S. Department of Justice
National Institute of Corrections

Benjamin J. Malcolm
Director of Parole Services of America Corp.
National Consulting Service

Helen Vanderbilt
Chairman of the South Forty Corporation
Providing in-prison educational and
post-prison rehabilitation programs

Research & Forecasts Staff Responsible

For This Study

Franklin J. Walton, Ph.D.
Executive Vice President, Research & Forecasts

Deborah Morgenthal
Senior Project Director

Dena Merriam
Senior Writer

John Zeglarski
Director of Data Collection

Frank Matthews
Director of Design and Production

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INTRODUCTION

The Figgie Report Part V: Parole--A Search for Justice and Safety is designed to focus attention on an issue, debated for over a century, that some experts now believe represents a crisis in corrections and a threat to public safety. Although every state has different laws and policies for bringing to trial and sentencing offenders, national averages reveal that only 16% of all prisoners serve their full sentence. For all offenses, less than half of the full sentence is served. In addition, violent criminals serve a smaller percentage of their sentences than those imprisoned for less serious crimes.

The reasons for this are complex and include the criteria for determining parole release, overcrowding in prisons, and widely divergent state sentencing patterns. The results, however, are clear and alarming. Private citizens and criminal justice professionals alike are disturbed about the early release of violent criminals and the apparent inability of the penal system to rehabilitate offenders.

As a result of public and legislative criticism of parole, twelve states have passed determinate sentencing legislation, thereby eliminating the major role of paroling authorities in those states. The legislative abolishment of post-release supervision of inmates has occurred in four of the twelve states.

In addition, the legislatures of a number of other states and the U.S. Congress are currently considering bills that would limit both judicial and parole release discretion. (In-depth discussions of sentencing practices across the country can be found in the Appendix.)

Public action groups around the country are promoting improved rights of victims of crimes, better restitution, and more protection from repeat offenders and violent criminals. For example, STOPAR (Stop Parole of Violent Criminals), based in Atlanta, is committed to changing the laws in Georgia so that persons convicted of violent crimes would be required to serve the full sentence imposed.

Some criminal justice experts speculate that the public has lost confidence in the "rehabilitative model" upon which parole selection primarily is based. The Figgie Report on Fear of Crime: America Afraid (1980) revealed that eight of every ten Americans feel that the American criminal justice system is not effective in rehabilitating criminals or in helping them return to society as law-abiding citizens.[1]

Not only are Americans afraid of crime, they are confused about how to punish the criminals. Most Americans feel that increasingly harsh, punitive measures are necessary, but more than half do not believe that prison sentences discourage crime.[2]

A new study of recidivism (the return of offenders to criminal behavior and incarceration) in fourteen states illustrates the challenges facing the criminal justice system and a concerned public. More than a quarter of the inmates released from state prisons are back in cells in two years and nearly a third are back within three years.[3]

The decision to undertake this fifth Figgie Report on Crime came about as a result of concern expressed at high levels about the parole system. As part of Figgie International's ongoing commitment to inform Americans about important issues affecting life in America today, it was agreed that an in-depth national survey on attitudes about the parole system should comprise the fifth in The Figgie Report crime series.

In The Figgie Report Part V: Parole--A Search for Justice and Safety, the general public, judges, and lawyers as well as paroling authorities speak out concerning the role and impact of parole release and supervision, both in theory and in practice. Moreover, these surveyed groups express their views on related issues such as judicial discretion, sentencing practices, prison overcrowding, and alternatives to punishment in prison.

The Figgie Report Part V not only reveals public and professional sentiment, but also aims to present an accurate description of the major developments in the history of parole, along with the key elements of the current parole debate; to provide up-to-date information about recent parole and sentencing practices; and to offer examples of some of this country's positive responses to this crisis in how to improve the criminal justice system.

It is unlikely that the public and the legislators of this country can, in the short term, arrive at a common perspective concerning the purpose of corrections and parole. However, it is the hope of this report that research directed toward increasing awareness of the parole system and related issues can help promote constructive discussions aimed at creating a more just system of criminal justice.

One parole expert, David T. Stanley, poses a pertinent and challenging question that strikes at the heart of the controversy surrounding parole: "How can the requirements of individual freedom, justice, and public safety best be balanced?"[4] The Figgie Report Part V:--A Search for Justice and Safety reveals how Americans today are attempting to answer that question for themselves.

OVERVIEW

The role and impact of parole practice has been debated since its inception over a century ago. Now, more than ever before, the function of parole release and supervision has become a critical national issue. The prison system has become dangerously overcrowded, prompting some states to institute emergency parole release. To a public already concerned about crime, the recent factor of early parole release has helped to place parole under close scrutiny. This fifth in a series of reports on crime, The Figgie Report Part V: Parole--A Search for Justice and Safety is designed to focus attention on what some experts now believe represents a crisis in the criminal justice system and a threat to public safety.

Due to current parole release and sentencing practices, few prisoners serve their full term and most serve less than half of the sentence imposed. The reasons for this are complex, involving not only the nature of the parole system but prison overcrowding and widely divergent state sentencing patterns. Further exacerbating the situation is the apparent inability of the current penal system to rehabilitate offenders. These factors have generated considerable alarm among the general public and criminal justice officials alike. In studying the parole system, therefore, it is necessary to ask hard questions about current sentencing practices, institutional overcrowding, and alternatives to punishment in prison.

A Resigned and Frustrated Public

What emerges from the findings of this report is a portrait of public resignation and frustration with the parole system and the criminal justice system in general. Most Americans feel current parole practices need to be changed, and many do not feel that the current penal system is reducing what they believe to be rising crime rates.

Americans are particularly dissatisfied with what they perceive to be the lenient handling of offenders, especially of those who commit violent crimes. Nearly three-quarters of the public believe that judges are not harsh enough on criminals. Interestingly, judges have the impression that the public is satisfied with their sentencing judgments. Over half of the surveyed judges report that the public perceives them as judging fairly. However, this report reveals that the public wants judges to send more offenders to prison. In fact, over half the public disagree with the idea of imposing a jail sentence only as a last resort.

What also emerges from The Figgie Report Part V is a portrait of a public that makes a distinction concerning different types of criminals and how they ought to be punished. Majorities among both the public and the experts indicate strong support for building more prisons and reserving them primarily for serious offenders.

However, most Americans also urge that less serious offenders be punished with alternatives to prison such as community service programs. Although discouraged by the penal system and concerned about crime, most Americans believe that prisoners should be given the opportunity to rehabilitate themselves. They also believe that offenders are entitled to decent living conditions in prison and half are willing to help finance new prisons and improve conditions in existing institutions.

Consensus to Reorganize Parole System

The study discloses that majorities of Americans, including judges and lawyers, are critical of the parole system and believe it is in need of change. The public, in particular, believes parole release and supervision are in need of reorganization.

Judges and lawyers recognize that the public is frustrated with the parole system, and even go so far as to imagine that Americans want to eliminate the process altogether. However, few Americans support abolishing parole. The public as well as the professionals distinguish between how the parole system functions in practice ~~and~~ how they believe it is intended to function in principle. Although there is consensus among all groups that parole release needs to be revamped, a majority express strong support for one of its theoretical underpinnings: its role in controlling for sentencing disparities at earlier stages.

In similar fashion, the current practice of parole supervision comes under criticism, yet respondents support some form of supervision to enable offenders to make the transition from prison into society. While recognizing the need for changes in the current system, Americans affirm that upon release from prison, offenders need to be both watched and helped through supervision and job counseling.

Views on Changing the Sentence

Another controversial question critical to the parole system is whether or not a judge's sentence ought to be changed, and if yes--then why and by whom. More than half the public and large majorities of judges and lawyers support the changing of a sentence **under certain circumstances**. Circumstances that would warrant such a change are evidence that the offender is innocent, evidence that the original sentence was unwarrantedly unfair, and proof that there has been a substantial effort at rehabilitation.

There is some disagreement as to who should be empowered to change the sentence. Half the lawyers and judges think the judge should make the decision, but only a quarter of the public feels this way. However, it is a close race: nearly as many judges, lawyers, and members of the public feel that a board independent of prison authorities should make the decision. This response clearly indicates support for the principle of parole release.

Findings Reveal a High Level of Public Awareness

One goal of this study is to measure and assess public knowledge concerning parole, as well as related issues such as judicial discretion, sentencing practices, prison overcrowding, and alternatives to incarceration. This report indicates a high level of understanding among the general public about the parole system, particularly about the criteria used to determine parole eligibility.

For example, nearly two-thirds of the public know that when judges set sentences they do not expect offenders to remain in prison for the entire length of the sentence imposed. Also, three-quarters of the public believe that parole boards try to assess fairly the length of time offenders should remain in prison based on the seriousness of the crime committed and the offenders' capacity for rehabilitation.

Broad Support for Alternatives

The public, along with judges, lawyers, and paroling authorities, support alternatives to prison programs for certain offenders. Recognizing the urgency resulting from overcrowding and the need to find alternative methods of punishment, a majority of Americans are receptive to the idea of community supervision, restitution, and halfway houses.

They also are highly supportive of vocational training and educational programs for the incarcerated. A striking 93% of the general population support such programs. Americans want not only to see offenders apprehended and punished, but also to see them trained to lead useful and productive lives upon their return to the community. Many Americans claim they are even willing to help pay for this. Half the general public maintain that they would agree to a five-year increase of 1% in state income taxes in order to pay for additional prisons and the improvement of prison conditions and opportunities. This is only one indication of the importance and urgency which Americans give to the current crisis in the criminal justice system.

Critical Issues Identified

In order to identify the areas of the current parole system which are in the greatest need of change, judges, lawyers, and paroling authorities were asked, in an open-ended format, what they feel are the three most critical issues facing the parole system. Prison overcrowding was cited as the most critical issue. Another area identified as needing reform was the process by which parole eligibility is determined. Many see the need for parole guidelines to help parole boards in every state make consistent and equitable parole release decisions.

Parole authorities also identify inadequate parole supervision as a major problem. This problem is twofold, involving the quality and quantity of parole officers able to supervise offenders effectively, and the lack of funding required to develop community programs for offenders. For instance, parole officials describe a number of frustrations in deciding when and how offenders should reenter society. The lack of rehabilitation in prison, the lack of sufficient manpower to handle the heavy caseloads, and the lack of jobs for parolees are some of the main difficulties they encounter.

Solutions Recommended

In the face of these problems, parole authorities suggest a number of ways to improve the present system. One primary need is for more funding. Another is to address overcrowding by building more prisons and finding creative and well-planned alternatives to incarceration for nonviolent offenders. Finally, many parole authorities advocate educating the public, supplying more supervision staff, and enacting new legislation to provide explicit parole guidelines.

It is clear that the criminal justice system in this country is experiencing a crisis. The prison system is strained to its limits. The broad discretion and quasi-judicial power of parole board members are under fire. Parole officers are overburdened with heavy caseloads and in many instances are undertrained. In addition, there is a critical lack of resources and rehabilitation programs. The public, the bar, and the judiciary recognize that something must be done.

Findings from this study indicate broad support for imposing tough sentences for violent criminals and building more prisons to accommodate them. The study also discloses that this widespread approval of harsh measures does not exclude sensitivity to prisoners' rights and limited flexibility in sentencing. The public is willing to pay for prison improvements and strongly advocates alternatives to punishment in prison for certain offenders. Furthermore, the public, though discouraged with current practices, believes that rehabilitation opportunities should be made available to all offenders.

CHAPTER ONE

The Figgie Report on Parole is an examination of public and professional attitudes and awareness concerning current parole practices and related issues such as sentencing decisions, prison overcrowding, and alternatives to punishment in prison. In this first section, judges, lawyers, and paroling authorities offer their views on critical issues facing the parole system and suggest solutions to those problems. In addition, the general public reveals a high level of understanding about parole practices and the role of parole release and supervision.

The major finding in this section reveals that a majority of Americans, including judges, lawyers, and paroling authorities, believe the parole system needs to be reorganized. However, all groups agree that there must be some system to supervise the offender's return to society. The public also agrees with judges and lawyers that parole board review is useful in deterring crime and in controlling for sentencing disparities.

CHAPTER ONE: ATTITUDES TOWARD PAROLE RELEASE AND SUPERVISION

> "The development of professional respect for the parole system based on correct public understanding is very important."
> —-Federal Parole Board Member

Origins and Theories

The first attempt in the U.S. to parole inmates occurred in the New York State Reformatory in 1876. That institution's first superintendent, Zebulon R. Brockway, lobbied for and was successful in persuading the state legislature to pass an indeterminate sentencing law that allowed for the early, conditional release of prisoners based on their progress and behavior in prison.

During the early days of parole, those released were not required to submit to parole supervision. This aspect of the system was added later. By 1900, some system of parole existed in twenty states; by 1922, fourty-four states and the U.S. federal system authorized the discretionary parole of inmates.[1]

The roots of parole are based on the notion that rehabilitation is possible if:

1. A system is in effect within the prison to begin the offender's rehabilitation.
2. Opportunities are developed to allow offenders to serve the last portion of their sentence in the community, free but supervised.

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[1] Randy J. Polisky, Probation and Parole Directory, College Park, MD: The American Correctional Association, 1981, p. v.

The theoretical underpinnings of the parole system include three basic concepts of what happens when a prisoner is paroled:

- **Grace or privilege**--The government extends offenders the privilege of release before the end of the sentence;
- **Contact or consent**--In exchange for this early freedom, the government expects offenders to abide by certain conditions;
- **Custody**--Even though free, parolees are in the keeping of the government.[2]

From a more functional point of view, parole is defined as both **helping** and **shielding**, "aimed at helping the parolee and supervising his adjustment to society, while at the same time protecting society."[3] This definition also includes the idea that determinations of whether or not a prisoner is "safe" and "ready" to be released into society can best be decided by an impartial group of citizens independent of the sentencing court and the prison authorities. Parole boards soon gained such discretion that their determinations indicated the actual time to be served, rather than what the judges had sentenced.

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[2] Michael Gottesman and Lewis J. Hecker, "Parole: A Critique of Its Legal Foundations and Conditions," New York University Law Review, Vol. 38 (June 1963), pp. 703-707.

[3] William Parker, Parole: Origins, Development, Current Practices and Statutes, Parole Corrections Project Resource Document No. 1, College Park, MD: American Correctional Association, 1975, p. 26.

Arguments For and Against Parole

The role and impact of parole practice has been debated since its inception a century ago. Proponents offer several reasons for maintaining the parole function, including the desirability of selecting low-risk inmates for early release and the belief that early release based on inmates' rehabilitation efforts should be permitted. They also stress the idea that community surveillance for released inmates is preferable to no surveillance and assistance and that high and rising institutional construction and operational costs are improved by releasing nonviolent, low-risk inmates prior to completion of their maximum sentence.[4]

Critics, on the other hand, condemn parole as a costly system lacking uniform standards to determine which inmates should be eligible for parole. They claim that parole boards are usurping judicial power, that the current methods are largely unsuccessful at predicting whether or not the parolee will commit new crimes, and that the indeterminate model of sentencing heightens inmate stress caused by uncertainty concerning release from prison. Critics further argue that in practice the parole officer is unable to watch the parolee in such a way as to prevent misbehavior, and that parole surveillance can cause further psychological stress to its subjects.[5]

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[4] Joseph R. Palmer, Ph.D., Parole Selection and Abolishment and Determinate Sentencing Creation: Role and Influence in the Change Process, Washington, D.C.: The National Institute of Corrections, 1984, p. 1.

[5] David T. Stanley, Prisoners Among Us: The Problem of Parole, Washington, D.C.: The Brookings Institute, 1976, p. 190.

During the 1970s, the critics won support from legislators, and the transfer of power to the parole boards began to be contested. According to Andrew von Hirsch, one of the leading academics who has explored the issues raised by parole abolition, Americans react negatively to the idea of punishment decisions being made by people who are not judges: "The popular perception is that the parole board's function is to somehow subvert the judge's sentence, to introduce some kind of leniency into the system."[6]

This point of view is shared by Oregon Judge James Hargreaves: "When the public hears me give a guy ten years, they think I'm a hero, but my sentence doesn't mean a thing because the parole board can do away with a good part of it."[7]

What the Public Knows About Time Served

In the first phase of The Figgie Report Part V, 1,004 randomly selected Americans were asked three questions relating to how long prisoners serve their terms before being released on parole. Taken together, the findings from this mini-survey depict a public that is discouraged about the impact of parole release on prison terms, and resigned to an ineffective system of meting out punishment. In short, the public has come to expect the worst.

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[6] Kevin Krajick, "Abolishing Parole: An Idea Whose Time Has Passed," Corrections Magazine, June 1983, p. 33.

[7] Ibid, p. 34.

However, contrary to current popular speculation, the public does not think that the judge has the final word about sentencing, nor does the public think most prisoners serve a large portion of the sentence imposed by the judge. When asked what percentage of prisoners serve their full sentence, as opposed to those who leave early on either parole or some other form of early release, four out of ten (34%) Americans selected the correct answer: 10% to 20% (the precise figure is 16%). Only 13% selected 51% to 60%, and 7% picked 41% to 50% (Table A).

Next, the public was asked what percentage of the full sentence prisoners serve for all offenses before being released on parole. Although the correct figure is 36%, only 14% of the public selected this response. Nearly a third (30%) of the public think prisoners serve only 10% to 20% of the full sentence. This finding indicates that Americans do not think that a sentence means very much in terms of how long the offender actually will remain in prison (Table B).

TABLE A:

In your opinion, what percentage of prisoners serve their full sentence, as opposed to those who leave early on either parole or some other form of early release?

	%
10% to 20%	34
21% to 30%	16
31% to 40%	14
41% to 50%	7
51% to 60%	13
Don't know/No answer	16
Number of respondents	(1,004)

TABLE B:

In your opinion, what percentage of the full sentence do prisoners serve for all offenses before, for instance, being released on parole?

	%
10% to 20%	30
21% to 30%	19
31% to 40%	14
41% to 50%	10
51% to 60%	10
Don't know/No answer	18
Number of respondents	(1,004)

Finally, seven out of ten Americans (71%) identified as true a statement claiming that offenders imprisoned for the most serious crimes actually serve a smaller percentage of their sentence than those imprisoned for less serious crimes (Table C).

TABLE C:

Please tell me if you think the following statement is true or false: Offenders imprisoned for the most serious crimes actually serve a smaller percentage of their sentence than those imprisoned for less serious crimes.

	%
True	71
False	22
Don't know/No answer	7
Number of respondents	(1,004)

Although the Bureau of Justice Statistics attests that this statement is true, the facts are complex and often misleading. For instance, in actual time, violent criminals serve a longer sentence than less serious offenders. But because they frequently receive extremely long maximum sentences, even if they serve a third of that term, it appears they are serving a proportionately shorter time than those imprisoned for less serious crimes. For example, serving twenty years on a sixty-year term is considerably less, proportionately, than two years on a four year term.[8]

Also, the vast majority of states authorize some kind of credit for good behavior in prison. Therefore, almost all prisoners--even those denied parole or in states with no parole--will be released before the expiration of their term.

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[8] Herbert Koppel, "Time Served In Prison," Bureau of Justice Statistics Special Report, June 1984, p. 3.

It is important to keep in mind that prisoners enter parole either by parole board decision (discretionary release) or by fulfilling the conditions of a mandatory release. In all but nine states, the parole board has discretionary authority to parole prisoners based on statutory or administrative determinations of eligibility.

Mandatory parolees are those who are not released from prison by a parole board; they enter parole supervision at the expiration of their maximum term minus time off for good behavior or program participation. Mandatory parolees include those released from prison under determinate sentencing statutes (which provide for release to supervision at a prescribed or "determined" date). In the case of both discretionary parole and mandatory parole release, violations of the conditions of release (including new offenses) may result in a return to prison for the balance of the unexpired maximum term.

In the federal sector, mandatory releases are those who have been denied release and must remain in prison until the expiration of their term. At that time they are released and receive a certain length of supervision determined by the term itself as established by the U.S. Parole Commission.[9]

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[9] "Probation and Parole 1983," Bureau of Justice Statistics Bulletin, September 1984.

The following report offers a brief discussion of these issues and an exploration of current public and professional attitudes concerning the parole system.

I. Parole Release

Consensus to Reorganize System

The findings of this report indicate that many private citizens and professionals are critical of the parole system and believe it is in need of change. Nearly two-thirds (61%) of the public, half (50%) the lawyers, and over a third (39%) of the judges believe that the practice of having parole boards set prison release dates should be reorganized.

Interestingly, judges were the most likely (62%) of the three groups to say that parole release should be retained, compared to 24% of the public and 45% of the lawyers who feel this way. Only a minority in each group voice support for the abolition of parole release: 8% of the public, 10% of the lawyers, and only 2% of the judges (Table 1.1A).

TABLE 1.1A:

Do you think the practice of having parole boards set prison release dates for inmates should be:

	Lawyers %	Judges %	General Public %
Retained	45	62	24
Reorganized	50	39	61
Abolished	10	2	8
Don't know/No answer	1	4	9
Number of respondents	(104)	(102)	(1,004)

It is interesting to note that the public's experience as victims of crimes does not effect their views of parole release practice. There are no significant differences among those members of the public who have attended court as victims of a crime and those who have never had this experience (Table 1.1B).

TABLE 1.1B:

Do you think the practice of having parole boards set prison release dates for inmates should be:

	All Respondents %	Victims of Crime %	Not Victims of Crime %
Retained	24	29	24
Reorganized	61	60	61
Abolished	8	5	8
Don't know/No answer	9	7	9
Number of respondents	(1,004)	(87)	(916)

Experts Misread Public Sentiment

Judges and lawyers recognize that the public is frustrated with parole release practice and even go so far as to imagine that Americans want to eliminate the process altogether. Nearly half (43%) of the lawyers and a quarter (25%) of the judges think the public would like to see parole release abolished (Table 1.2A).

TABLE 1.2A:

Do you think the general public would like to see parole release:

	Lawyers %	Judges %	General Public %
Retained	18	31	24
Reorganized	35	33	61
Abolished	43	25	8
Don't know/No answer	6	11	9
Number of respondents	(104)	(102)	(1,004)

Paroling authorities also believe the public is fed up with parole release practices. For example, 26% of state parole officers and supervisors think the public would like to see parole release abolished (Table 1.2B).

TABLE 1.2B:

Do you think the general public would like to see parole release:

	Federal Supervisors & Officers %	State Supervisors & Officers %	Federal Board Members %	State Board Members %	General Public %
Retained	26	41	20	44	24
Reorganized	30	42	20	54	61
Abolished	37	26	60	23	8
Don't know/No answer	17	7	0	8	0
Number of respondents	(46)	(102)	(5)	(52)	(1,004)

Parole as a Means of Equalizing Sentences

Interpretation of the various findings throughout the report reflects the views of respondents concerning both the **practice** of parole and the **principles** of parole. This distinction is important when trying to understand why the abolition of parole is not supported more strongly by the public, judges, and lawyers. Although most of the respondents in these three groups believe parole release practices need to be reorganized, a majority in all groups also express strong support for one of the theoretical underpinnings of parole release: its role in equalizing sentences. Six out of ten Americans (64%) agree that the parole agency performs a valuable safety net function which controls for sentencing disparities at earlier stages. Similar numbers of judges (68%) and lawyers (64%) agree with this statement. Here, too, judges voice the most vociferous support of parole release, with three out of ten (33%) strongly agreeing (Table 1.3).

TABLE 1.3:

Please tell me if you agree strongly, agree somewhat, disagree somewhat, or disagree strongly with the following statement: The parole agency performs a valuable safety net function that controls for sentencing disparities at earlier stages.

	Lawyers %	Judges %	General Public %
Agree strongly	19	33	25
Agree somewhat	45	35	39
Disagree somewhat	10	6	12
Disagree strongly	22	15	9
Don't know/No answer	4	11	14
Number of respondents	(104)	(102)	(1,004)

Testing Public Awareness of Parole Release

This survey was designed both to explore public attitudes and to assess the level of public awareness concerning parole practices. Therefore, the general public was asked a number of true and false questions about parole release and supervision. Survey findings indicate a high level of understanding about the parole system, particularly about the main criteria parole boards use when determining parole eligibility.

Over two-thirds of the general public (69%) **correctly identify as false** a statement claiming that when judges set sentences, they expect offenders to remain in prison that entire period of time.

The public also understands some of the important determining factors that parole boards utilize. Nearly seven out of ten Americans (68%) **correctly identify as true** a statement claiming that when parole boards make release decisions they consider the dangerousness of the convicts and their likelihood of committing other crimes. Three-quarters (76%) also **correctly identify as true** a statement saying that parole boards try to fairly assess how long offenders should remain in prison based on the seriousness of the crimes committed. Three-quarters (75%) also **correctly identify as true** a statement asserting that parole boards take into consideration the offenders' capacity for rehabilitation.

However, many Americans are confused about the actual time of release. Nearly half (47%) **incorrectly identify as true** a statement saying that parole boards release inmates as soon as they are eligible for parole. In practice, many states do not release prisoners the first time they are eligible, that is, after completion of a third of their maximum sentence. For example, in Texas, only 40% of the state's prisoners are released after serving a third of their term. The rest are denied parole release at that time for a number of reasons including misconduct in prison and must wait several more months for their cases to again be reviewed by the parole board (Table 1.4).

TABLE 1.4:

Please tell me if you think the following statements are true or false:

	True %	False %	Don't Know/ No Answer %
When judges set sentences they expect offenders to remain in prison that entire period of time.	36	69	6
When parole boards make release decisions, they consider the dangerousness of the convicts and their likelihood of committing other crimes.	68	23	8
Parole boards try to make fair assessments of how long offenders should stay in prison based on the seriousness of the crimes committed.	76	19	5
When deciding whether or not to release offenders, parole boards consider the offenders' capacity for rehabilitation.	75	16	8
Parole boards release inmates as soon as they are eligible for parole.	47	45	8

II. Parole Supervision

Defining Its Function

Many experts in the field of parole complain that when legislators, the media, or members of the public refer to parole they do not distinguish between parole as a method for the early release of prisoners and parole as a vehicle for supervising offenders in the community. One of the aims of The Figgie Report Part V is to help illuminate that distinction, and to examine attitudes about the function of parole supervision separate from parole release practice.

Unlike parole release and revocation decisions, parole supervision is not dependent on the indeterminate sentence. It is a method for controlling, helping, or keeping track of offenders in the community. The supervision function of parole is carried on by an extended network of thousands of agents organized into parole district offices and divisions. (For a closer look at the nature of this job see Chapter Two.)

In most jurisdictions in the U.S., offenders are released from prison on parole supervision; in other jurisdictions they are released at the expiration of their terms with no supervision at all. According to one survey conducted for the National Institute of Law Enforcement and Criminal Justice in 1977, the abolition of parole supervision would result in "substantial increases in arrest, conviction, and return to prison."[10]

Support for Supervision Among Sample Groups

The question that arises, then, is how to assess the role of parole supervision in reducing criminal behavior. In an effort to explore current sentiment concerning the function of parole supervision, this report asked the public, judges, and lawyers what they think should happen to convicts after they are released from prison. Nearly five out of ten Americans (48%) think convicts should be watched for a certain period of time, put back in prison if they do not obey certain rules, and helped to readjust to society through supervision and job counseling. Nearly six out of ten (59%) judges and lawyers share this point of view.

Only a quarter (24%) of the public support surveillance without supervision, and similar minorities of judges (16%) and lawyers (14%) feel this way. Only 3% of the public thinks offenders leaving prison should be "left alone" (Table 1.5).

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[10] Robert Martinson, Ph.D. and Judith Wilks, "Save Parole Supervision," Federal Probation, Vol. 41, No. 3 (September 1977), The Administrative Office of the United States Courts, p. 23.

TABLE 1.5:

Do you think that after convicts are released from prison they should be:

	Lawyers %	Judges %	General Public %
Watched--put back if not obeying	14	16	24
Helped to readjust to society	22	21	22
Both watched and helped	59	59	48
Left alone	4	1	3
Don't know/No answer	1	4	2
Number of respondents	(104)	(102)	(1,004)

Among the public, judges, and lawyers who support a system of both surveillance and supervision, opinion was divided as to how these two functions should be executed. Over half the public (57%) think one individual should watch offenders and another should perform the helping functions. However, half the judges (50%) and lawyers (48%) think the same individual should watch and help (Table 1.6).

TABLE 1.6:

Which of the following do you agree with?

	Lawyers %	Judges %	General Public %
Same individual should watch and help	48	50	33
One individual should watch, others should help	44	35	57
Don't know/No answer	8	15	10
Number of respondents	(61)	(60)	(484)

Supervision in Need of Change

While all three sample groups clearly support the idea of some kind of system to help offenders readjust to society while also keeping an eye on them, report findings indicate that the system as it currently functions is perceived as in need of change.

Five out of ten Americans (55%) think parole supervision should be reorganized, compared to 57% of lawyers and 41% of judges who feel this way. As in the case of support for parole release, judges are the most likely group (64%) to think parole supervision should be retained, compared to 37% of the public who feel this way. Only 4% of the public and lawyers and 1% of the judges support the abolition of parole supervision (Table 1.7).

TABLE 1.7:

Do you think parole supervision should be:

	Lawyers %	Judges %	General Public %
Retained	45	64	37
Reorganized	57	41	55
Abolished	4	1	4
Don't know/No answer	1	4	6
Number of respondents	(104)	(102)	(1,004)

Experts Imagine a Discouraged Public

As in the case of parole release, the surveyed lawyers and judges believe that the public is frustrated and resigned about the way parole supervision currently operates. Over a third (36%) of the lawyers and nearly a quarter (21%) of the judges think the public wants to see parole supervision abolished (Table 1.8A).

TABLE 1.8A:

Do you think the general public would like to see parole supervision:

	Lawyers %	Judges %	General Public %
Retained	28	43	37
Reorganized	34	30	55
Abolished	36	21	4
Don't know/No answer	6	10	6
Number of respondents	(104)	(102)	(1,004)

Among paroling authorities there are also some misconceptions about the public's viewpoint on parole supervision. State (16%) and federal (17%) parole officers think the public wants parole supervision to be abolished (Table 1.8B).

TABLE 1.8B:

Do you think the general public would like to see parole supervision:

	Federal Supervisors & Officers %	State Supervisors & Officers %	Federal Board Members %	State Board Members %	General Public %
Reorganized	54	60	60	63	37
Retained	15	31	40	33	55
Abolished	17	16	0	8	4
Don't know/No answer	13	2	0	10	9
Number of respondents	(46)	(102)	(5)	(52)	(1,004)

Probation Supervision Assessed

The public also was asked to give its assessment of probation supervision. Nearly half (49%) think it should be reorganized, and a slightly smaller number (44%) support its retention. Only 2% think it should be abolished (Table 1.9).

TABLE 1.9:

Do you think that probation supervision should be:

	%
Retained	44
Reorganized	49
Abolished	2
Don't know/No answer	8
Number of respondents	(1,004)

Clear Valuation of Role of Supervision

It is significant that many Americans are willing to put money behind their support of a system of parole and probation supervision. Half (50%) of the surveyed public think taxpayers should help finance parole and probation supervision (Table 1.10).

TABLE 1.10:

Do you think taxpayers should help finance parole and probation supervision?

	%
Yes	50
No	45
Don't know/No answer	5

Number of respondents (1,004)

Attitudes Toward Parole

Although Americans feel the parole supervision system needs to be reorganized, survey findings indicate that the public acknowledges its purported benefits both to the offender and to the community. A majority (82%) agree that for some offenders, parole supervision is useful in deterring crime and in helping the offender adjust to the community. An overwhelming majority of judges (98%) and lawyers (97%) share the public's viewpoint. (Table 1.11).

TABLE 1.11:

Please tell me if you agree strongly, agree somewhat, disagree somewhat, or disagree strongly with the following statement: For some offenders, parole supervision is useful in deterring crime and in helping the individual to adjust to the community.

	Lawyers %	Judges %	General Public %
Agree strongly	56	69	31
Agree somewhat	41	29	51
Disagree somewhat	3	2	8
Disagree strongly	0	0	8
Don't know/No answer	0	0	3
Number of respondents	(104)	(102)	(1,004)

Two-thirds of the public (66%) and the judges (69%) agree that for some offenders, parole supervision assists in detecting violators and putting them in prison faster than the courts. Eight out of ten lawyers (82%) express agreement with this statement (Table 1.12).

TABLE 1.12:

Please tell me if you agree strongly, agree somewhat, disagree somewhat, or disagree strongly with the following statement: For some offenders, parole supervision assists in detecting violators and putting them in prison faster than the courts.

	Lawyers %	Judges %	General Public %
Agree strongly	47	33	26
Agree somewhat	35	36	40
Disagree somewhat	10	11	12
Disagree strongly	8	6	10
Don't know/No answer	1	14	11
Number of respondents	(104)	(102)	(1,004)

Public Aware of Supervision Practices

The public was asked several specific questions concerning how the regulations and practices of parole supervision work. Seven out of ten (70%) **correctly identify as true** the statement that offenders on parole can be sent back to prison for associating with other convicted felons. This is one example of the kind of parole violation that can result in a parolee being sent back to prison. However, many Americans have a misperception about the authority of parole officers. In fact, two-thirds (67%) **incorrectly identify as true** a statement asserting that parole officers have the power to determine if a parolee should be sent back to prison. Parole officers only have the power to arrest and detain a parolee who they believe has violated parole conditions. The decision to return the parolee to prison can only be made by the parole board.

Finally, the public was asked about the amount of supervision a parolee receives from his parole officer. Nearly half (46%) **incorrectly identify as true** a statement saying that on the average, convicts on parole have two to three contacts a month with their parole officer. Nearly a quarter (22%) did not know if this statement were true or false. This high percentage of uncertainty and inaccuracy illustrates how complicated this issue is. There are wide variations in parole supervision practice state to state due to differences in caseload size and the classification of offenders for a range of crimes. On the low end, some parolees have one to two contacts a month with their parole officer. On the high end, they may be supervised as many as three times a week (Table 1.13).

TABLE 1.13:

Please tell me if you think the following statements are true or false:

	True %	False %	Don't Know/ No Answer %
Offenders on parole can be sent back to prison for associating with other convicted felons.	70	22	8
Parole officers have the power to determine if a parolee should be sent back to prison.	67	22	11
On the average, convicts on parole have two to three contacts a month with their parole officer.	46	32	22

III. Critical Parole Issues Identified

Open-Ended Approach

In order to explore in more depth the attitudes of experts concerning the parole system, judges, lawyers, parole board members, and parole officers and supervisors were asked in an unprompted, open-ended format to describe what they feel are the three most critical issues facing the parole system today. These responses were then coded to reflect those most often cited by these respondents. The following discussion combines statistics obtained by quantifying the responses, summary observations based on the respondents' remarks, and direct quotes selected from the various questionnaires.

Prison Overcrowding Heads List of Problems

Prison overcrowding is cited most frequently as a critical issue facing the parole system. Over half the judges (56%), 44% of the lawyers, and 40% of the state parole officers and supervisors believe this is the number one parole-related problem.

One consequence of prison overcrowding is that added pressure is placed on parole boards to release prisoners early. As one defense attorney says about this situation, "Because of overcrowding in prisons, there's too much demand for parole release when the offender is not really qualified." Another consequence is that more pressure is placed on judges.

The Figgie Report Part V finds that over half (51%) of the surveyed judges claim their sentencing decisions are influenced by overcrowding in prisons. (Chapter Three of this report contains complete findings related to sentencing decisions.)

Prison overcrowding also affects in-prison programs, such as educational and vocational training, as these become seriously overcrowded too. One district parole supervisor described the consequences: "Crowded conditions in prison and lack of funds discourage rehabilitation and training efforts. Convicts should be provided with educational opportunities and the chance to learn job skills."

A prosecutor pointed out the impact of overcrowding on the public: "Ex-cons and offenders can't get jobs because they aren't trained and are unmotivated. Those who don't work commit crimes. Those who have committed crimes can't get jobs."

Abolishment of Parole a Major Concern

The trend to abolish parole is cited by many paroling authorities as a critical issue. Half (50%) of the federal parole officers/supervisors, nearly two-thirds (60%) of the federal board members, and a third (35%) of the state board members mention this issue. One parole board member explains why he feels parole is threatened: "The public thinks parole board members are bleeding hearts."

Parole Eligibility Frequently Cited

Another area of major concern is parole eligibility. Four out of ten lawyers (43%) are concerned about the way in which parole boards make decisions to release prisoners before the end of their sentences. Paroling authorities mention this issue less often. Only 21% of the state officers/supervisors, 23% of state board members, and only 13% of federal officers/supervisors cite this problem.

For many respondents, the process by which parole eligibility is determined raises questions about whether or not parole boards are "second-guessing" and "overriding" judges' sentences, and whether or not the system has objective data that can predict the success or failure of parolees--particularly of violent offenders. One prosecutor answered this question for himself: "Violent criminals are being released on parole prematurely."

A district judge voiced his own view of the difficulties inherent in parole release decisions: "I'm concerned that my cases go before the parole board and I don't get to review them. After all, we're all accountable to the citizens when the parole board releases prisoners."

What makes parole eligibility issues so difficult to evaluate is that the accountability is shared by other players in the criminal justice system. One parole officer describes this shared responsibility--and blame. "There are discrepancies as to how judges look at cases and this makes it hard for parole boards to reach uniform decisions about who should get released. Also, parole guidelines are too broad. Judges and parole officials don't cooperate to make the system more consistent."

Improvement of Parole Supervision Needed

Another critical issue, cited by a third (30%) of state parole officers/supervisors, is the need to improve and expand parole supervision. One judge attacks this issue head on: "Caseloads for parole and probation officers are too large and most officers are overworked and everyone is underpaid."

Some respondents mention the importance of enhancing the job skills of parole officers. One defense attorney said, "There aren't enough qualified parole agents. It takes a special breed of person to do this important job the right way."

From the viewpoint of the parole officer, the job itself contains some irreconcilable problems. A district supervisor describes the difficulty this way: "As a parole agent, it's hard to balance a social work function with the law enforcement demand. And there are other personnel issues--low morale and low pay, understaffing, undertrained and overworked agents."

This last point was emphasized by a field supervisor. "It's impossible to do this job when the parole agent doesn't receive funding to assist the parolee released into his supervision."

Emphasis on Public Education and Safety

Another issue stressed by these respondents is the need to both educate the public and ensure its safety. Almost half (44%) of state board members cite this as a critical issue facing the parole system. According to one board member, "The development of professional respect for the parole system based on correct public understanding is very important."

Other respondents acknowledge that rising recidivism rates, the early release of violent criminals, and an overburdened and ineffective supervision process erodes public confidence in the parole system. However, one board member points out that the media affects public attitudes also. "The media's misunderstanding of how parole works and the misinformation it spreads--particularly about celebrated cases--damage the system's credibility with the public."

Other respondents mention that more attention needs to be given to victims' rights and restitution. As one chief justice explained: "No one notifies the victims, DA, or the Court of the release of prisoners. And there's a lack of responsibility regarding the convict making restitution."

Other experts point out that community programs for offenders are funded inadequately, making it virtually impossible to successfully reintegrate offenders into the community. While some respondents feel too many offenders are returning to prison and that there is too much parole violation and sentence disparity, others point to the lack of jobs for parolees, the lack of follow-up supervision, the lack of effective alternatives to incarceration, and the lack of communication between parole officers/supervisors and the parole commission (Tables 1.14A and 1.14B).

TABLE 1.14A:

What do you feel are the three most critical issues facing the parole system today?

[Multiple response in order of most often cited]

	Lawyers %	Judges %
Prison overcrowding	44	56
Parole eligibility	43	41
Parole supervision issues	24	18
Public awareness/safety	21	10
Trend to abolish parole	14	8
Lack of prison rehabilitation	9	8
No follow-up parole supervision	9	4
No funding for community programs	7	5
Lack of communication among parole authorities	3	9
No jobs for parolees	7	4
Parole violations	4	4
Sentence disparity	4	1
Repeat offenders/recidivism	3	1
Caseloads too large	3	1
Substance abuse	1	0
Other	21	17
Number of respondents	(104)	(102)

TABLE 1.14B:

What do you think are the three most critical issues facing parole at this time?

[Multiple response in order of most often cited]

	Federal Supervisors & Officers %	State Supervisors & Officers %	Federal Board Members %	State Board Members %
Trend to abolish parole	50	19	60	35
Prison overcrowding	7	40	0	21
Public awareness/safety	11	19	80	44
Parole supervision issues	13	30	80	13
No funding/community programs	4	30	20	15
Parole eligibility	13	21	0	23
Caseloads too large	7	27	0	6
No jobs for parolees	11	14	20	10
Substance abuse	9	7	0	4
Repeat offenders/recidivism	4	6	0	6
Sentence disparity	7	6	0	4
No follow-up parole supervision	2	4	0	6
Lack of prison rehabilitation	4	3	0	4
Parole violations	9	1	0	4
Lack of communication among parole authorities	7	0	0	4
Other	9	34	40	25
Number of respondents	(46)	(102)	(5)	(52)

IV. Problem-Solving Approaches

Respondents also were asked in open-ended format what approaches they would suggest to deal with the issues identified. The six most frequently cited approaches are:

- Allocate more funding;
- Educate the public;
- Build more prisons;
- Enact new legislation;
- Subsidize the hiring of more supervision staff;
- Develop more alternatives to punishment in prison.

More Funding and Programs for Parole-Related Services

The need for strong community resources and more funding for parole supervision was most often recommended by paroling authorities. Over a third (37%) of state parole officers/supervisors, 17% of state board members, and 7% of federal officers/supervisors advocate the allocation of money to increase programs and manpower.

One parole board member offered an interesting method of soliciting support for community programs: "Tell big business that crime and parole cost fiscally and emotionally. Retail stores, for instance, raise prices because of shoplifting. Once this message is communicated, set up programs sponsored by the corporate community to give educational and vocational training to parolees."

More Prisons Must Be Built

Judges were the most likely to suggest building more prisons as a means of solving prison overcrowding. In fact, 31% of the judges recommend this approach, as compared to only 15% of the lawyers, 9% of the state parole officers/supervisors, and 2% of the federal officers/supervisors. None of the five federal parole board members advocate building more prisons.

One prosecutor was outspoken in his lack of support for this approach: "Building more prisons is not the key. Changing attitudes toward rehabilitation is. We need a constitutional amendment to reinstate the idea of punishment of the criminal and protection of the public. And we need a campaign to erase public ignorance of what happens after criminals are locked up."

Emphasis on Educating Public

Many other respondents agree with the spirit and approach of the lawyer's remarks, repeatedly stressing the need to educate the public about how the parole system works. One-quarter (25%) of both the state board members and the state officers/supervisors cite this as a solution. A defense attorney explains one reason why educating the public is so important: "Basically, the general public is nonsympathetic and noncaring about the situations that exist for offenders and convicts."

Suggestions were made as to how the public could be informed. Some experts recommend conducting seminars and disseminating special materials containing current research on parole issues. Another point of view on the need and manner of educating the public is offered by a parole board member:

> Enhance public understanding of the parole system by inviting citizens, media, and politicians to see how the system works. Let them sit in on interviews (board hearings)...really open up the doors. We need to set up an affirmative public relations awareness program so that fears and misunderstandings can be dealt with and something can be learned about this complex system we call justice.

New and Varied Legislation Advised

Many surveyed experts cite the need to address parole issues by enacting new legislation. For instance, some professionals advocate enacting determinate sentencing and instituting parole and sentencing guidelines. Lawyers are the most likely to advise this approach, with 25% mentioning various legislative solutions, compared to only 13% each of judges, state board members, and federal officers/supervisors.

Other respondents would support legislation to modify criminal laws so that lighter penalties are given for nonviolent cases and stiffer sentences given for repeat and violent offenders. Others suggest including the input of judges or a jury to oversee parole guidelines and parole eligibility decisions. One judge recommends having "the burden of proof fall on the defendant as to why he should be paroled early."

Another judge has a very specific legislative agenda:

> Standards for parole eligibility have to be set uniformly and more objectively. Prisoners need to serve a minimum amount of time before being paroled, a period of time that is punitive but reasonable. Once parole release dates have been set, prisoners should be segregated as to the time of their release and the seriousness of the crime.

The importance of tightening parole eligibility criteria and establishing national parole parameters is underscored by many respondents. One lawyer suggests that right after the offender is sentenced, he should be informed when he will be released on parole according to national parameters. He recommends informing the victim as well. "Right now neither the public nor the offender knows at the time of sentencing what he can expect. This uncertainty is harmful for the criminal and the victim."

Increase Ranks of Parole Agents

The importance of hiring more parole agents to supervise parolees is cited by many professionals. For example, 20% of both state parole officers/supervisors and federal board members and 16% of the lawyers recommend this as a solution. As one defense attorney articulated this approach: "Parole offices are very understaffed. Hire more parole agents and pay them well so you attract a more highly trained person. Then fund the agencies in such a way that they can do the job right--namely, help the offender and protect the community."

Address Alternatives to Prison

Establishing and funding more alternatives to punishment in prison were mentioned by a number of respondents as ways to solve critical parole issues. State officers/supervisors (16%) and state board members (15%) were the most likely to cite this approach, although 11% of the judges also mention the role of alternatives.

These alternatives include a range of community service programs including alcohol and drug treatment programs. (See Chapter Five for a discussion of alternatives.) One magistrate advises using alternatives to incarceration more often, particularly for first offenders and juveniles. He also stressed the need to insist that prisoners receive educational and job training in prison. "In-prison rehabilitation programs are essential if convicts are to successfully reintegrate into the community."

A few respondents feel that parole board hearings could be improved if people with criminal justice experience were appointed to serve on boards. A few respondents think parole should be abolished altogether. A circuit court judge offers a point of view which encompasses many of the solutions put forth by the various respondents:

> The whole parole system has to be reorganized. If we abolish parole the prisons will overflow. Building more prisons is necessary but it takes time, it's very costly, and it's not a cureall. I'd like to see more communications and cooperation among the different people involved with the parole process. Certainly that's where to begin.

(Tables 1.15A and 1.15B.)

TABLE 1.15A:

What approaches would you suggest to deal with these issues?

[Multiple responses in order of most frequently cited]

	Lawyers %	Judges %
Build more prisons	15	31
New legislation	25	13
More supervision staff	16	8
More funding	13	11
More alternatives to prison	7	11
Abolish parole	11	5
Improve parole hearings	7	5
Better trained agents	8	4
Educate public	7	3
Training programs for inmates	2	6
Develop opportunities/parolees	6	0
Longer sentences	4	1
Cooperation among parole system members	2	0
Other	19	21
Don't know/No answer	13	16
Number of respondents	(104)	(102)

TABLE 1.15B:

What approaches would you suggest to deal with these issues?

[Multiple responses in order of most frequently cited]

	Federal Supervisors & Officers %	State Supervisors & Officers %	Federal Board Members %	State Board Members %
More funding	7	37	0	17
Educate public	2	25	40	25
New legislation	13	16	0	13
More supervision staff	0	20	20	2
More alternatives to prison	11	16	0	15
Develop opportunities/parolees	13	7	0	8
Training programs for inmates	4	7	0	13
Cooperation among parole system members	4	5	20	13
Better trained agents	7	9	0	4
Build more prisons	2	9	0	0
Abolish parole	13	2	0	4
Improve parole hearings	2	1	0	10
Longer sentences	0	4	0	0
Other	15	25	40	19
Don't know/No answer	39	6	0	15
Number of respondents	(46)	(102)	(5)	(52)

CHAPTER TWO

This chapter explores parole issues from the point of view of parole board members and parole officers and supervisors, including the criteria their states use to determine parole eligibility. They also discuss what they feel are the main functions of their jobs and the obstacles that interfere with their job performance. For instance, many mention the lack of resources for rehabilitation programs, having too many cases and a lack of public support and understanding.

This section also provides details about parole board hearings and the selection process of board members as well as information concerning the rate of recidivism among parolees.

CHAPTER TWO: THE JOB OF PAROLE AUTHORITIES

> "The public thinks parole board members are bleeding hearts."
>
> —State Parole Board Member

> "I'm concerned that my cases go before the parole board and I don't get to review them. After all, we're all accountable to the citizens when the parole board releases prisoners."
>
> —District Judge

> "As a parole agent, it's hard to balance a social work function with the law enforcement demand. And there are other personnel issues—low morale and low pay, understaffing, undertrained and overworked agents."
>
> —District Parole Supervisor

I. Parole Board Members

It is clear that parole board members have a tremendous responsibility: they decide whether or not an offender is eligible for parole release and when he or she should be released. As revealed in the previous chapter, this authority has recently come under criticism. Some critics believe that parole board members usurp the power of judges. Others contend that the criteria by which parole eligibility is determined is unscientific and inconsistent and gives too much discretion to parole board members.

Establishing Parole Guidelines

To counter these criticisms, many reformers advised that parole boards adopt mathematically scored guidelines in order to make parole board decisions more predictable and equitable. Long concerned with the question of parole board discretion and sentencing parity, the U.S. Parole Commission devised written guidelines in 1974 for use by federal parole boards.

The Commission's guidelines utilized a matrix composed of a salient factor--a measure of the prisoner's parole prognosis--which is then applied to a list of offense characteristics--a measure of the severity of the crime. In this way the board obtains the number of months of incarceration that are appropriate, the definition of appropriate being based on research into actual past parole decisions conducted by the National Council on Crime and Delinquency (NCCD).[1]

The aim was to be able to assess the likelihood of an offender's successful reintegration into the community upon release from prison. Use of the guidelines system was "designed to enhance the consistency and fairness in decision-making by guiding and structuring the exercise of Parole Commission discretion without removing the opportunity for individual case consideration. Decisions departing from the guidelines are permitted, but specific written reasons for such departures are required in each case."[2]

Following the example of the U.S. Parole Commission, seventeen states have since developed written parole guidelines that either utilize similar matrix systems or other factors to help the decision-making process be more predictable. To further assist this process, the National Institute of Corrections (NIC) has earmarked $200,000 to launch a special program designed to help a limited number of states better understand their particular statutes concerning parole board policy and responsibility, and then to work with them to develop methods for improving parole release decisions. Currently, NIC is reviewing requests from six agencies who responded to solicitations concerning this project. One agency will be hired to consult with the participating states which will be selected based on criteria determined by NIC and the agency awarded the NIC contract.

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[1] Stanley, Prisoners Among Us, p. 62.

[2] Peter Hoffman, Ph.D. and Sheldon Adelberg, Ph.D., "The Salient Factor Score: A Nontechnical Overview," Federal Probation, Vol. 44, No. 1 (March 1980), p. 44.

Application of Parole Guidelines

Of the fifty-two state parole board members surveyed (approximately one per state), two-thirds report their state uses written parole guidelines in determining parole suitability (Table 2.1).

TABLE 2.1:

Does your state use written parole guidelines in determining parole suitability? (State parole board members)

	%
Yes	64
No	36
Number of respondents	(52)

High Level of Satisfaction with Guidelines

Both federal and state board members express a high level of satisfaction with these guidelines. In fact, four of the five federal board members say they are very satisfied.

Far from feeling that these guidelines infringe on their authority, over half (58%) of the state parole board members in states using written guidelines report they are satisfied with them. In fact, 31% say they are very satisfied and 27% say they are somewhat satisfied. Only 6% of the state board members report they are unsatisfied. Interestingly, 36% claim they do not have an opinion (Tables 2.2A and 2.2B).

TABLE 2.2A:

How would you rate your level of satisfaction with federal parole guidelines? (Federal parole board officers and supervisors)

	%
Very satisfied	80
Somewhat satisfied	20
Number of respondents	(5)

TABLE 2.2B:

How would you rate your level of satisfaction with parole guidelines? (State parole board officers and supervisors)

	%
Very satisfied	31
Somewhat satisfied	27
Somewhat unsatisfied	6
Don't know/No answer	36
Number of respondents	(52)

Respondents Identify Parole Criteria

Although these guidelines differ in form and specificity from state to state, the criteria used to determine parole eligibility appears to be quite similar in most states. Survey respondents were asked in open-ended format to identify the three main criteria used to determine parole eligibility in their particular state. **The nature of the offense** is the most frequently cited criteria, mentioned by 65% of all the state board members, including those in states without written guidelines. Second in importance is **the offender's behavior while in prison**, reported by 52%. **The offender's prior criminal record is cited by 42%.** Only one in five (23%) claims that the length of time served is an important factor and 21% say that public safety is one of the main criteria. (Table 2.3).

TABLE 2.3:

What are the three main criteria your state uses to determine parole eligibility? (State parole board members)

	%
Nature of offense	65
Institutional behavior	52
Prior criminal record	42
Time served	23
Public safety	21
Parole plan	17
Guidelines	15
Parole record	12
Official recommendations	8
Other	14
Don't know/No answer	2
Number of respondents	(52)

Qualifications for the Job

In addition to parole eligibility decisions, the way in which parole board members are selected for the position is also frequently criticized by opponents of the parole system. In his book Prisoners Among Us: The Problem of Parole, parole expert David T. Stanley points out that the experience and attitudes of board members are of "crucial importance to offenders and to society in general, and of considerable interest to political leaders."[3]

Consequently, there are two main criteria in choosing board members--expertness and community responsiveness. Decisions reflect both kinds of judgments, or perhaps uneasy compromises between them. Ideally, board members should be as knowledgeable as possible. In 1973, the National Advisory Commission on Criminal Justice Standards and Goals recommended that parole board members "should possess academic training in fields such as criminology, education, psychology, psychiatry, law, social work, or sociology [and] . . . a high degree of skill in comprehending legal issues and statistical information and an ability to develop and promulgate policy."[4]

Earlier standards by the American Correctional Association (ACA) agree but add other important qualifications such as "integrity, intelligence, and good judgment [so] as to command respect and public confidence . . . be forthright, courageous, and independent . . . [and] have an intimate knowledge of common situations and problems confronting offenders."[5]

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[3] Stanley, Prisoners Among Us, p. 28.

[4] Corrections, National Advisory Commission on Criminal Justice Standards and Goals, Washington, D.C.: U.S. Government Printing Office, 1973, p. 420.

It is unlikely that any one person can measure up to all these qualifications. In actuality, state laws are far behind this ideal. The NCCD study of fifty-four boards showed that "twenty-four jurisdictions have no statutory requirements for parole board members responsible for the release of felony offenders. One state makes generalized references to character, twenty-one states refer broadly to experience or training." That leaves only eight with specific requirements.[6]

The NCCD also reports that, "Many appointments have stemmed from political patronage, an especially dangerous criterion for positions which involve great discretion, human freedom in its most basic forms, and difficult moral, legal, and scientific issues."[7]

Whether the primary motive is patronage or the selection of a well-qualified person, parole board appointments are politically important enough to require high-level attention. Members are chosen by the chief executive in forty out of fifty-three jurisdictions; in thirty-one of the forty, confirmation by at least one house of the legislature (or by a council) is required. Only two states select board members from civil service lists.[8]

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[5] Manual of Correctional Standards, Washington, D.C.: American Correctional Association, 1969, p. 119.

[6] Vincent O'Leary and Joan Nuffield, The Organization of Parole Systems in the United States, Hackensack, NJ: National Council on Crime and Delinquency, 1972, p. xxiii.

[7] Ibid.

What makes these appointments all the more complex is that there is "no solid evidence that a parole board member with a certain type of background will make decisions that differ significantly from those of a member with a different background."[9] In fact, while liberal and conservative patterns of decisions can be identified, they do not necessarily relate to the members' qualifications.

Debate Concerning Length of Term

How long a board member should serve is another topic of debate. Depending on the governor's policy, the terms of board members range from "at the pleasure of the governor" and "two years" to "life." Seventeen states have six-year terms, as do the District of Columbia and the U.S. Parole Board. Another seventeen states have four-year terms.[10]

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[8] Parker, Parole, pp. 47-49.

[9] Stanley, Prisoners Among Us, p. 30.

[10] Parker, Parole, pp. 51-52.

David T. Stanley insightfully articulates the dilemma concerning how long a board member ought to serve:

> Longer terms are presumed to assure more competent performance and greater independence from outside influences. This may be so, but not necessarily. After nearly a year of meeting with parole boards, it is clear to me that a new member can get on top of the job in about six months--can learn the process and relationships, the biases of his fellow members, the tactics of inmates and prison staff, and the weighing of the factors that enter into his own decisions. As to independence, he may have more of it in his second year than in his sixth. As time goes on, his brain may be washed paler and paler by institutional officials, by manipulative prisoners, by his colleagues, or by statehouse politicians. There is no one answer: the optimum term depends on the individual and the setting.[11]

Respondents' Time in Job

The sample of board members surveyed reflects a broad range of time served. Nearly half (48%) of the state board members have held their current position for one to two years. A quarter (27%) have served for between three and five years. Four of the five federal board members interviewed have held their position for one or two years (Tables 2.4A and 2.4B).

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[11] Stanley, Prisoners Among Us, p. 31.

TABLE 2.4A:

How many years have you been working in your current position? (State parole board members)

	%
1 to 2	48
3 to 5	27
6 to 8	15
9 to 11	4
More than 11	6
Number of respondents	(52)

TABLE 2.4B:

How many years have you been working in your current position? (Federal parole board members)

	%
1 to 2	80
3 to 5	20
Number of respondents	(5)

The Parole Hearings Process

During the parole hearing, attended by two to three parole members and a prison caseworker, the prisoner is given the opportunity to speak about his prison record, his parole plans, and the circumstances of his crime. Whatever the topic, the members look for signs of the inmate's willingness to confront his problems, both past and future.

This is clearly an important event for the prisoner. However, given the number of prisoners, the number of board members, and the number of hours in a day, this big moment can, for the prisoner, seem like only an instant. According to the NCCD, the national median for board hearings is twenty-nine cases a day.[12]

Given the other requirements that a board member must fulfill every day, his available time for hearings is only about four hours a day. This means that at ten cases a day, each prisoner receives twenty-four minutes; at fifteen cases a day, fifteen minutes; at twenty cases, twelve minutes; at twenty-six cases, nine minutes; at thirty-five cases, seven minutes.[13]

Respondents Report High Number of Hearings

The findings of this report correspond with the NCCD data. Nearly half (49%) of the surveyed state board members--in states that still use parole--conduct over twenty-five hearings a day. More than a quarter (28%) conduct between eighteen and twenty-four hearings, and 16% conduct between eleven and seventeen hearings. Only 5% of the board members conduct less than eleven hearings on an average day.

In states where parole has been abolished, the number of hearings conducted drops considerably because members are processing only those prisoners who were sentenced before parole was abolished.

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[12] O'Leary and Nuffield, Organization of Parole Systems, p. xxx.

[13] Stanley, Prisoners Among Us, p. 38.

Over half (56%) of these board members conduct only one to five hearings per day (Table 2.5).

TABLE 2.5:

In an average day, how many hearings do you conduct?

	All Respondents %	States with Parole %	States without Parole %
1 to 5	9	0	56
6 to 10	4	5	0
11 to 17	18	16	33
18 to 24	21	28	0
More than 25	37	49	0
Don't know/No answer	12	2	11
Number of respondents	(57)	(43)	(91)

For half of the state board members (52%), the number of hearings they conduct per day has remained about the same as in 1983. Over a third (37%) report that the number has increased, although most of these respondents (33%) say there has been only a reasonable increase. Only 6% assert there has been a decrease in the number of hearings conducted per day (Table 2.6).

TABLE 2.6:

How does this number compare to 1983? (State board members)

	%
Large increase	4
Reasonable increase	33
Stayed the same	52
Decrease	6
Don't know/No answer	6
Number of respondents	(52)

Prisoners are in part justified in complaining that the parole hearing is too short a time to evaluate an individual. But board members respond by saying that the hearing is only part of what they base their decision on. They have test results, prison caseworkers' reports, recommendations of psychologists, comments on the parole plan, and other data to consider.[14]

Factors Which Interfere with Job Performance

While the prisoner may complain about the hearing process, the board member is critical of other factors which he feels interfere with his ability to effectively perform his job. Surprisingly, this report finds that the number of hearings to be conducted ranks low in a list of grievances mentioned by state board members. In fact, only 42% of the state board members say that too many hearings to conduct interferes with their job performance, of which 36% say they interfere only "somewhat."

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[14] Ibid, p. 23.

It is the lack of resources and offender programs that most interferes with their job performance, cited by nearly three-quarters (71%), of which 36% say they interfere "very much." In addition, board members lack confidence in parole supervision, with 44% reporting this as an interference.

Certainly, it is a critical problem that when board members make decisions to release prisoners into the community, they lack confidence that these offenders will receive the necessary help to become law-abiding and useful citizens. As one board member describes it: "Without access to vocational and rehabilitation programs, the parolee is between a rock and a hard place--finishing out his punishment within the community but with no decent chance at avoiding a return to a life of crime."

The lack of public support of parole is also a major concern to board members, with more than half (57%) citing this as an interference. This underscores the finding in Chapter One in which board members cite the need to educate the public about the parole system. Another related concern is press coverage of a particular crime and its effect on parole release decisions. Nearly half (46%) the board members report that media attention to a case interferes with their job performance (Table 2.7A).

The lack of resources and offender programs is a problem for federal board members as well. Three out of five say this interferes with their ability to perform their work. Two out of three cite as hindrances the lack of public support, the lack of confidence in parole supervision, and the media's attention to a case (Table 2.7B).

TABLE 2.7A:

How much do the following factors interfere with your ability to perform your work? (State parole board members)

	Very Much %	Somewhat %	Very Little %	Not at All %	Don't Know/ No Answer %
Lack of resources and offender programs	36	35	10	19	0
Lack of public support	21	36	8	31	4
Lack of confidence in parole supervision	19	25	10	44	2
Media attention to a case	17	29	19	33	2
Too many hearings to conduct	6	36	10	48	0
No support from judges	4	27	21	48	0
Number of respondents	(52)				

TABLE 2.7B:

How much do the following factors interfere with your ability to perform your work? (Federal parole board members)

	Very Much %	Somewhat %	Very Little %	Not at All %
Lack of confidence in parole supervision	40	0	20	40
Lack of resources and offender programs	20	40	0	40
Lack of public support	20	20	0	60
Media attention to a case	20	20	40	20
No support from judges	0	20	40	40
Number of respondents (5)				

II. Parole Officers and Supervisors

Once the parole board makes its decision about releasing the inmate, the offender becomes a parolee. His period of parole is intended both to protect society from any future crimes he may commit and to help him become a law-abiding and productive citizen. His success as a parolee is largely the responsibility of the parole officer who must make difficult judgments about the methods and frequency of surveillance, about possible returns to prison, about discharge from parole, and about the means of assistance to be used.

Purpose of the Parole Officer

The parole officer thus has a dual function: surveillance and assistance. In a few states, the job is accomplished by two individuals. In Georgia, for example, serious offenders on parole are released to an intensive supervision program where one parole officer provides the counseling and another acts as the policeman, enforcing the parole conditions.

However, the findings of this report indicate that for most parole officers and supervisors, assisting offenders is the most important function of their work. A strong majority (86%) of state and federal officers (80%) cite this as a very important aspect of their job. In fact, helping offenders is credited with more importance than either surveillance or punishment.

This statistic supports the findings of a 1979 survey carried out by Mary C. Donnellan and Harvey A. Moore. In that survey, 79% of parole officers claim that the paramount goal of parole workers is assisting clients with their problems.[15]

Findings from The Figgie Report Part V reveal that performing surveillance and monitoring offenders ranks second in importance, with 68% of the state officers reporting this as one of their most important functions, compared to 52% of the federal officers who feel this way. An almost equally high number (62%) of state officers cite enforcing restitution and community service as one of their most important functions, while 70% of the federal officers believe this. Only 17% of the state officers and 9% of federal officers feel that punishment of the offender is an important part of their work (Tables 2.8A and 2.8B).

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[15] Mary C. Donnellan and Harvey A. Moore, Ph.D., "Rehabilitation and Protection: The Goals and Orientation of Probation and Parole Workers," Offender Rehabilitation, Vol. 3 (Spring 1979), New York: The Haworth Press, pp. 207-218.

TABLE 2.8A:

Please rate the functions you feel are the most important for your agency to perform. (State parole officers and supervisors)

	Very Important %	Moderately Important %	Least Important %	Don't Know/ No Answer %
Assist offenders	86	13	0	1
Perform surveillance and monitoring	68	24	7	2
Enforce restitution and community service	62	28	7	3
Punish offenders	17	38	37	9
Number of respondents (102)				

TABLE 2.8B:

Please rate the functions you feel are the most important for your agency to perform. (Federal parole officers and supervisors)

	Very Important %	Moderately Important %	Least Important %	Don't Know/ No Answer %
Assist offenders	80	15	0	4
Perform surveillance and monitoring	52	30	13	4
Enforce restitution and community service	70	26	0	4
Punish offenders	9	57	30	4
Number of respondents (46)				

Organization of Parole Office

Between the individual parole officer and the director of corrections or the parole board are two or three levels of administrators, including the officer's immediate supervisor. The supervisor may be a full-time administrator, supervising as many as eight officers, or they may direct fewer officers and themselves handle a caseload of parolees. In either case, parole staffs, except in the smallest states, are substantial bureaucracies with perhaps hundreds of officers organized hierarchically. The administrators in charge impose controls and rules and the parole officers must conform as best they can while trying to supervise a difficult and diverse group of parolees.[16]

Job Qualifications, Training, and Experience

The basic parole officer job requires college graduation with a major in one of the social or behavioral sciences. Many have graduate degrees in these fields. Most officers are trained on the job by older officers for a week or two before they start work on their own caseload. Several states appoint trainee parole officers who receive a mixture of group instruction and on-the-job training.[17]

According to the findings of The Figgie Report Part V, federal parole officers have worked in the field for more years than state officers. Forty-one percent (41%) have worked at their present job for more than nine years, compared to 31% of the state officers. Most state officers (56%) report that they have held their current job for five years or less, compared to 40% of the federal officers (Tables 2.9A and 2.9B).

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[16] Stanley, Prisoners Among Us, p. 89.

[17] Ibid, pp. 92-93.

TABLE 2.9A:

How many years have you been in your current position?
(State parole officers and supervisors)

	%
1 to 2	20
3 to 5	36
6 to 8	14
9 to 11	12
More than 11	19
Number of respondents	(102)

TABLE 2.9B:

How many years have you been in your current position?
(Federal parole officers and supervisors)

	%
1 to 2	20
3 to 5	20
6 to 8	20
9 to 11	26
More than 11	15
Number of respondents	(46)

The Surveillance Function

According to parole law and theory, society is protected from the parolee's relapses into criminal behavior because the parole officer is watching him. Yet detailed supervision is in practice not feasible, in large part because of the size of the officer's caseloads. Depending on how the parolee is classified by each state for different offenses, the parolee is instructed to report to or be in contact with his officer as infrequently as once or twice a month or as often as several times a week.[18]

At the initial get-acquainted meeting, the officer finds out what the parolee's job is, if he has one, where it is located, what his housing arrangements are, whether he has family problems, and what his financial situation is. If the parolee needs help with any of these matters, the officer is supposed to help him or to direct him to appropriate community agencies.

The officer stresses the conditions of parole, particularly those related to any special problems the parolee has, such as warning him to avoid excessive drinking. Then the officer informs the parolee of what contacts he is required to make with him, urges him to come in or telephone any time he has a problem that threatens the success of his parole, and gives him a business card with the address and phone number of the parole office.[19]

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[18] Ibid, pp. 96-103.

[19] Ibid.

In addition to the time required to police his parolees, the officer is responsible for helping him readjust to society. How federal parole officers spend their time was the subject of a time study made by the Federal Judicial Center in January and February of 1973. The study found that a third of their time was spent on investigation and reports, mostly pre-sentence, and more than another third on office work not related to cases. This left 28.7% for supervision of offenders, which means each parolee could expect to receive 6.4 hours of supervision from his officer in the course of a year--or 32 minutes a month, i.e., seven minutes a week.[20]

Heavy Caseload

In 1967, the President's Commission on Law Enforcement and Administration of Justice recommended that probation and parole agencies be staffed on the basis of an average ratio of thirty-five offenders per officer.[21] However, in practice, few agencies come close to achieving this caseload size.

According to this study, parole officers are responsible individually for supervising a much larger number of offenders than the caseload recommended by the President's Commission. Report findings indicate that nearly six out of ten state officers (57%) carry a caseload of between fifty and ninety-nine offenders. One-third (32%) carry an even larger caseload, and only 8% carry a smaller one. Federal parole and probation officers handle fewer cases. Only a third (35%) carry between fifty and ninety-nine cases, while 59% handle fewer cases (Tables 2.10A and 2.10B).

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[20] Probation Time Study, Washington, D.C.: Federal Judicial Center, February 26, 1973.

[21] Task Force Report: Corrections, The President's Commission on Law Enforcement and the Administration of Justice, Washington, D.C.: U.S. Government Printing Office, 1967, p. 70.

TABLE 2.10A:

Officers: How many offenders do you supervise? Supervisors: How large a caseload do your officers carry? (State parole officers and supervisors)

	%
1 to 49	8
50 to 99	57
100 to 199	28
200 to 499	4
Other	2
Don't know/No answer	1
Number of respondents	(102)

TABLE 2.10B:

Officers: How many offenders do you supervise? Supervisors: How large a caseload do your officers carry? (Federal parole officers and supervisors)

	%
1 to 49	59
50 to 99	35
100 to 199	10
200 to 499	2
Other	4
Number of respondents	(46)

According to half of the state officers (52%), this number is an increase over the caseload they carried in 1983. One-third (34%) say their caseload has stayed the same, and 11% say it has decreased. Four out of ten (39%) of the federal officers say this number is an increase over last year, while 44% say it has stayed the same. Thirteen percent (13%) say it is a decrease (Tables 2.11A and 2.11B).

TABLE 2.11A:

How does this number compare to 1983? (State parole officers and supervisors)

	%
Large increase	16
Reasonable increase	36
Stayed the same	34
Decrease	9
Large decrease	2
Don't know/No answer	3
Number of respondents	(102)

TABLE 2.11B:

How does this number compare to 1983? (Federal parole officers and supervisors)

	%
Large increase	6
Reasonable increase	33
Stayed the same	44
Decrease	9
Large decrease	4
Don't know/No answer	4
Number of respondents	(46)

Factors that Interfere with Job Performance

Not surprisingly, given these statistics, a majority of parole officers report that the large number of cases they must supervise is a major hindrance to the performance of their work. In fact, 86% of the state officers say that this factor interferes with their ability to successfully carry out their duties, with 50% saying this interferes "very much."

Like the surveyed board members, parole officers and supervisors are extremely concerned about the lack of resources and offender programs. In light of the fact that most officers consider helping offenders to be the most important function of their job, it is a serious problem that a majority (80%) report there are not enough programs available to which they can direct their parolees for help. The surveyed officers also share the concern of board members regarding lack of public support, with two-thirds (68%) citing this as a serious obstacle.

Lower on the list of factors that interfere with job performance are the inappropriate placement of high-risk offenders under their supervision (cited by 55%), conflicting roles and job expectations (cited by 52%), a lack of support from judges (cited by 22%), and no support from parole boards (29%).

It is interesting to note that although critics of parole release point to the danger of the early release of high-risk offenders, surveyed parole officers are more concerned about the lack of resources and programs into which these and other parolees can be channeled in order to effectively reintegrate them into the community.

Similar Concerns for Federal Officers

This issue heads the list of job obstacles for nearly two-thirds (61%) of the federal parole officers and supervisors. More than half (57%) complain about the lack of public support. However, these respondents express less frustration with caseload size than do their colleagues on the state level, with only 39% reporting that caseload size interferes with their ability to perform their job (Tables 2.12A and 2.12B).

TABLE 2.12A:

How much do the following factors interfere with your ability to perform your work? (State parole officers and supervisors)

	Very Much %	Somewhat %	Very Little %	Not at All %	Don't Know/ No Answer %
Too many cases to supervise	50	36	7	6	1
Lack of resources and offender programs	39	42	14	5	0
Inappropriate placement of high-risk offenders under your supervision	26	29	28	14	3
Lack of public support	22	46	22	8	1
Conflicting roles and job expectations	16	36	37	9	2
No support from parole boards	8	21	44	24	3
No support from judges	6	16	44	28	6
Number of respondents	(102)				

TABLE 2.12B:

How much do the following factors interfere with your ability to perform your work? (Federal parole officers and supervisors)

	Very Much %	Somewhat %	Very Little %	Not at All %	Don't Know/ No Answer %
Lack of resources and offender programs	24	37	30	6	2
Too many cases to supervise	11	28	41	20	0
No support from parole boards	11	30	30	28	0
Lack of public support	11	46	26	17	0
Conflicting roles and job expectations	7	26	39	28	0
No support from parole boards	4	7	22	67	0
Inappropriate placement of high-risk offenders under your supervision	4	17	39	33	6
Number of respondents	(46)				

Differences in States Without Parole

As might be expected, parole officers in states where parole has been abolished are less likely (27%) to say that they have too many cases to supervise, compared to 40% who cite this grievance in states with parole. In states without parole, officers supervise only those offenders released to their agency before parole was abolished, and they receive few if any new cases (Table 2.12C).

TABLE 2.12C:

How much do the following factors interfere with your ability to perform your work:

TOO MANY CASES TO SUPERVISE

	All Respondents %	States with Parole %	States without Parole %
Very much	38	40	27
Somewhat	34	34	35
Very little	18	19	12
Not at all	10	7	23
Don't know/No answer	1	0	4
Number of respondents	(148)	(122)	(26)

Relationship of Supervision to Recidivism

Given the obstacles that officers report hinder them from effectively doing their job, the question arises as to whether or not surveillance works. While the combination of visits to the parole office and the officer's own visits to the home or workplace of the parolee keep pressure on the parolee to be law-abiding, it is difficult to determine if supervision prevents relapses into criminal behavior.

One program in St. Louis, Missouri strongly indicates that parole supervision can reduce the rate at which parolees return to crime. Instituted in 1974, Volunteers in Probation and Parole (VIPP), a model for similar programs throughout the state, engages the community in the rehabilitation of offenders on probation and parole. A proven benefit of the program is lower recidivism: only 15% of VIPP participants return to prison, compared to the 50% to 60% who return having had no such supervision.

VIPP, under the direction of the Missouri Board of Probation and Parole, provides numerous assistance programs to help parolees reenter the community as productive, law-abiding members. Representatives from business, industry, education, and the clergy oversee the work of some 300 St. Louis volunteers. Together they contribute 25,000 hours of service to some 1,200 clients. The primary activity is individual and group counseling, such as help in preventing alcohol abuse and special programs for sexual and violent offenders. Volunteers also offer offenders help with employment skills training.

In addition, the VIPP Board of Directors plays a role in educating the community about the needs of criminal offenders by holding two annual forums on criminal justice topics with such speakers as senators, judges, and public defenders. VIPP activities are funded by private and corporate donations as well as by state and federal grants.

Discouraging National Statistics

In many states, however, recidivism figures are not as optimistic. According to statistics gathered by the Bureau of Justice based on recidivism in fourteen states during 1979 and 1980, close to a third of state prisoners released returned to prison within three years, and a quarter were back in two years or less. Data supplied from these states also indicates that after the first year, the greater the amount of time a releasee remains in the community without reincarceration, the less are his or her chances of returning to prison. This finding lends support for parole supervision, particularly in the first year after release from prison.[22]

Bureau of Justice statistics also indicate that approximately 28% of all those entering state prisons in 1979 would still have been incarcerated at the time of their admission if they had served their maximum prior confinement sentence. Moreover, most of these recidivists were on parole for a prior crime when they reentered prison. Such findings are directly relevant to issues of sentencing policy, parole decisions, and the efficacy of parole supervision.[23]

Respondents Report Recidivism Rates

The findings of this report presents a different picture. Respondents assert that recidivism rates increase the longer the parolee remains in the community.

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[22] John F. Wallerstedt, "Returning to Prison," Bureau of Justice Statistics Special Report, November 1984.

[23] "Examining Recidivism," Bureau of Justice Statistics Special Report, February 1985.

For instance, nearly half (47%) of the state parole officers and supervisors surveyed report that only small numbers (10% or less) of parolees or probationers under supervision in their district receive new prison sentences within the first six months of parole release (Tables 2.13A and 2.13B).

After one year, the number of parolees and probationers receiving new prison sentences rises slightly. One-third (34%) of the state parole officers claim that after one year, only 10% or less of the parolees and probationers under supervision in their district receive new sentences (Table 2. 14A and 2.14B).

After two years, the number of parolees and probationers receiving new sentences again rises slightly, with fewer officers (14%) reporting that 10% to 20% of their parolees are resentenced (Tables 2.15A and 2.15B).

Arrests for Parole Violations

While the surest road to parole revocation and resentencing is to be arrested for a new crime, many revocations are the result of technical violations--a violation of one of the parole conditions. Associating with other ex-offenders, absconding, not going to work, using drugs, etc., are all causes of possible revocation. While on parole, offenders are legally in the custody of the government, completing their punishment outside prison walls. This, then, is the justification for imprisoning a parolee for some act or failure for which other persons would not be punished.[24]

However, technical violations are more likely to result in revocation when there has been a series of failures by the parolee that the parole officer sees as adding up to a return to criminality.

According to this report's findings, parolees are about as likely to have their parole revoked for technical violations as to be sentenced for committing new crimes. Nearly half (45%) of the state and two-thirds (64%) of the federal officers claim that 10% or less of the parolees have their parole revoked for technical violations (Tables 2.16A and 2.16B).

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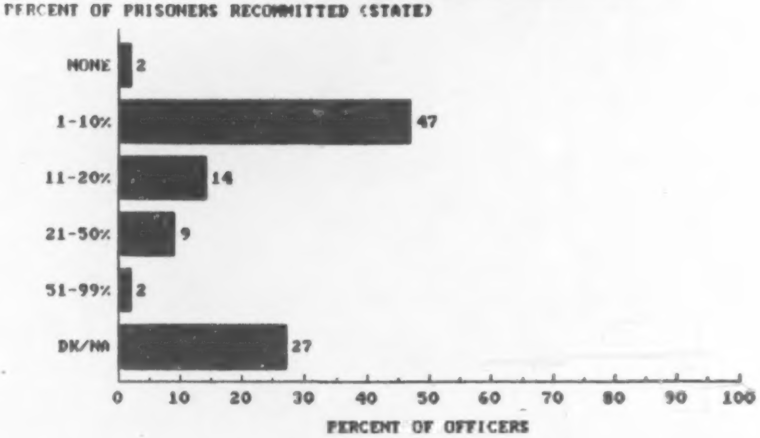
[24] Stanley, Prisoners Among Us, p. 104.

TABLE 2.13A

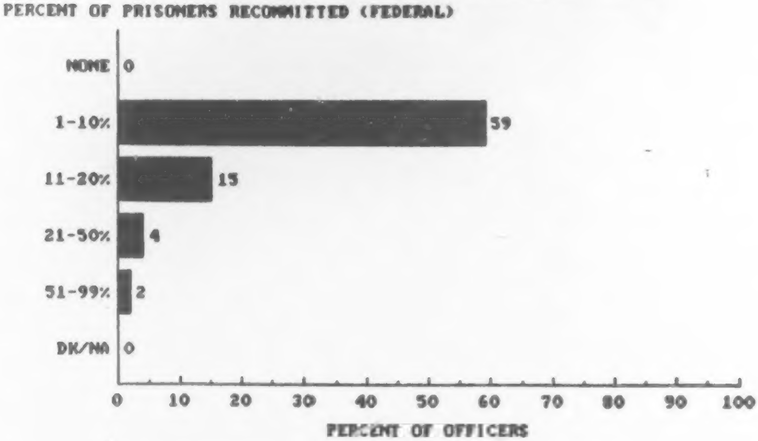
NEW PRISON SENTENCES WITHIN SIX MONTHS
(STATE PAROLE OFFICERS AND SUPERVISORS)



NUMBER OF RESPONDENTS (102)

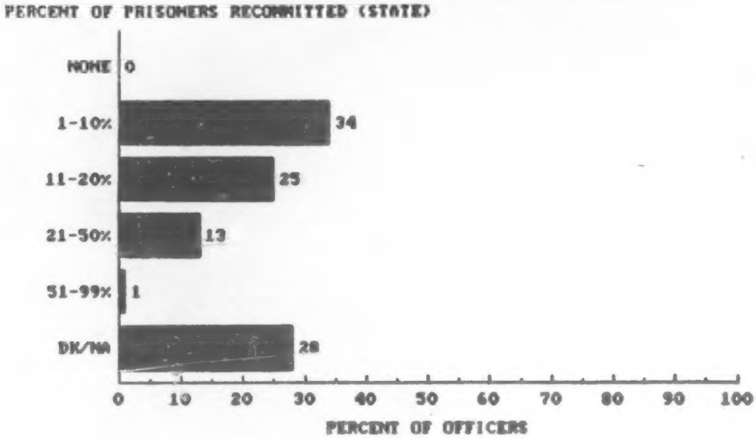
TABLE 2.13B

NEW PRISON SENTENCES WITHIN SIX MONTHS
(FEDERAL PAROLE OFFICERS AND SUPERVISORS)



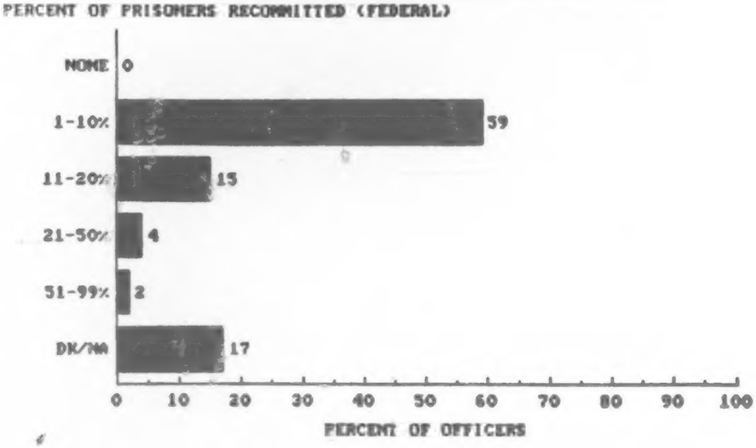
NUMBER OF RESPONDENTS (46)

TABLE 2.14A
NEW PRISON SENTENCES AFTER ONE YEAR
(STATE PAROLE OFFICERS AND SUPERVISORS)



NUMBER OF RESPONDENTS (102)

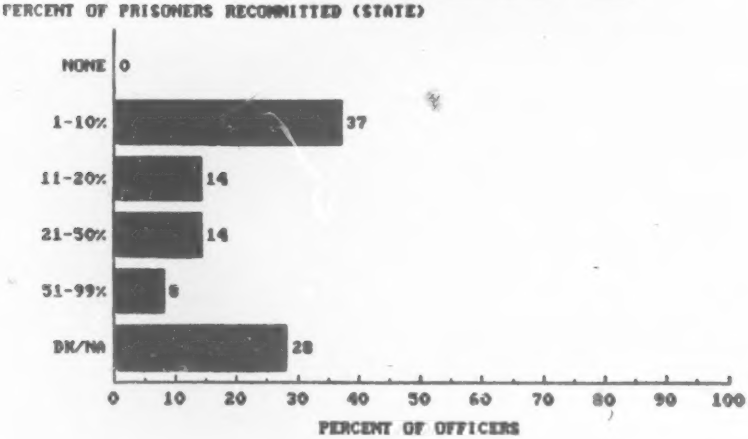
TABLE 2.14B
NEW PRISON SENTENCES AFTER ONE YEAR
(FEDERAL PAROLE OFFICERS AND SUPERVISORS)



NUMBER OF RESPONDENTS (46)

TABLE 2.15A

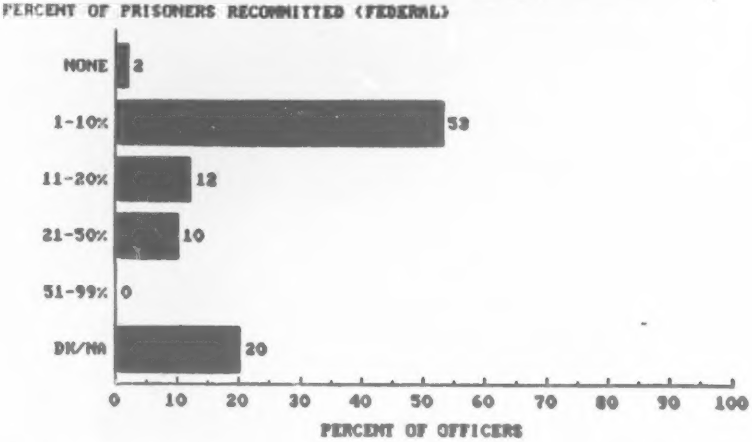
NEW PRISON SENTENCES AFTER TWO YEARS
(STATE PAROLE OFFICERS AND SUPERVISORS)



NUMBER OF RESPONDENTS (102)

TABLE 2.15B

NEW PRISON SENTENCES AFTER TWO YEARS
(FEDERAL PAROLE OFFICERS AND SUPERVISORS)



NUMBER OF RESPONDENTS (46)

TABLE 2.16A
PAROLE/PROB. REVOKED FOR TECHNICAL VIOLATIONS
(STATE PAROLE OFFICERS AND SUPERVISORS)

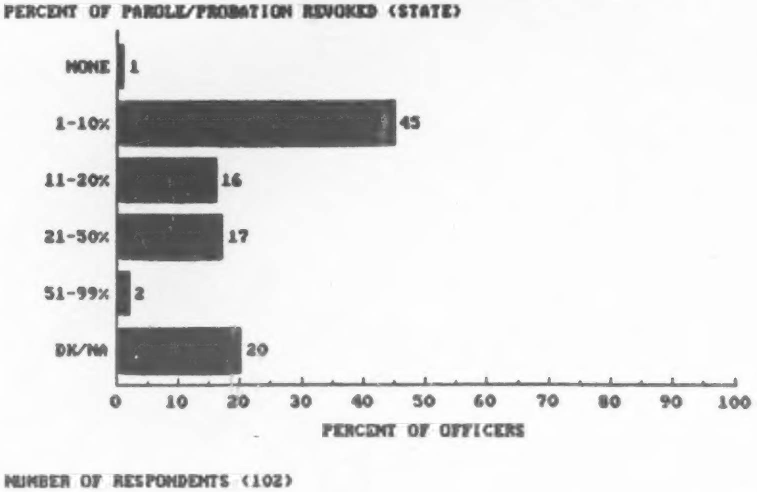
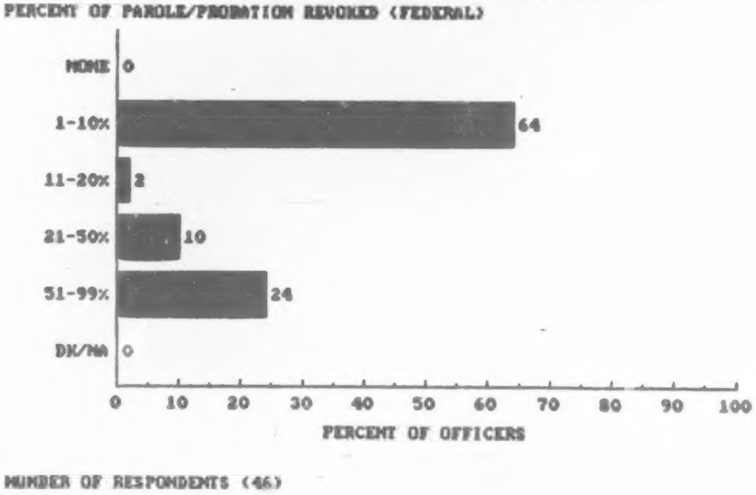


TABLE 2.16B
PAROLE/PROB. REVOKED FOR TECHNICAL VIOLATIONS
(FEDERAL PAROLE OFFICERS AND SUPERVISORS)



CHAPTER THREE

Over the past decade, criticism of indeterminate sentences and affiliated parole practices resulted in various changes in sentencing structures across the country. The abolition of parole in several states and, most recently, the abolition of federal parole are two major results of those changes. The impact of these developments is discussed in Chapter Three.

In addition, this section of the report examines public and expert opinion about sentencing decisions; how judges should arrive at their sentences; what kinds of sentences are favored; what factors warrant changing the original sentence; and who should make that change. Also, the ways in which judges react to sentencing guidelines indicate and reveal the factors influencing their sentencing decisions.

CHAPTER THREE: SENTENCING DECISIONS--MAINTAINING CHECKS AND BALANCES

> "There are discrepancies as to how judges look at cases and this makes it hard for parole boards to reach uniform decisions about who should get released. Also, parole guidelines are too broad. Judges and parole officials don't cooperate to make the system more consistent."
>
> ---State Parole Officer

I. Confronting a Complex Issue

For well over 100 years, the indeterminate sentence and parole have been synonymous with the criminal justice system in this country. In jurisdictions that use indeterminate sentencing, the court sets upper and lower bounds on the time to be served. The lower bound may be explicit or implicit. The actual release date (and therefore the time actually served) is determined by parole authorities. Beginning in the 1970s, critics began to question this method of sentencing and the way in which parole decisions were made. The main criticisms, stemming in part from public and political reactions to rising crime rates--and coming from the political right and left--include:

- Judges and parole boards are too lenient, allowing offenders to remain in, or be released to, the community before the expiration of the entire term imposed.
- Rehabilitation as an ideal and as a ground for sentencing or parole determination is not a satisfactory basis for measuring the period of confinement.
- Those making decisions about convicted offenders such as judges and parole boards should be held accountable to some kind of discipline.

- Past practices have resulted in discrimination among offenders as well as in sentencing disparity, often the result of perceived differential handling based on social class and race.
- Prison disturbances are to some degree the result of uncertainty about the indefinite nature of the length of confinement.[1]

The Move Towards Determinacy

In response to these criticisms, widespread pressure developed to replace the indeterminacy term with one that was determinate and definite. With determinate sentencing the court specifies the fixed term of incarceration which must be served in full (less any "good time" earned in prison). There is no discretionary parole release with this method of sentencing. The '70s witnessed a number of legislative revisions of sentencing structures, including the complete abolition of parole release in several states. Beginning with Maine in 1976, state legislators began enacting changes designed to reduce the discretion of sentencing judges or parole boards, and in some cases, of both.

The nature of these changes varies from state to state. Usually they include the abolition of parole as in Maine and often the curbing of judicial discretion. To date, nine states--California, Connecticut, Colorado, Illinois, Indiana, Maine, Minnesota, North Carolina, and New Mexico--have abolished their parole boards. Boards have been replaced with a range of plans that vest judges, prosecutors, and legislators with the power to determine the period of confinement.

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[1] Palmer, Parole Selection and Abolishment, p. 7.

- In Maine in 1976, the parole board was abolished and judges were required to mete out "flat" determinate sentences. However, the appropriate sentence range selected was greater than prior to the enactment of the new legislation.
- In California, under a 1976 law, judges impose determinate terms based on presumptive sentences set by the legislature. Three presumptive sentence lengths are specified for each class of offense; the middle one must be imposed unless there are aggravating or mitigating circumstances. The sentence must be served in full minus any "good time" reduction. There is no early parole release.
- Minnesota (1980) was the first state to develop and use sentencing guidelines to create greater determinacy.
- Washington (1981), New York (1983), and Florida (1983) have passed similar legislation to develop sentencing guidelines.
- Indiana (1977), Illinois (1978), Colorado (1979), North Carolina (1981), and Connecticut (1981), the other "determinate" states, have adopted changes which basically follow either the Maine or California model.

In addition, laws establishing mandatory minimum prison terms for specific offenses have reduced the power of parole boards to effect release in forty states. In fact, twenty-one states have enacted laws instituting "life without possibility of parole" sentences. For a more detailed explanation of terms and processes concerning these dramatic changes in sentencing laws, refer to the Bureau of Justice Statistics Bulletin, "Setting Prison Terms" and "Sentencing Practices in 13 States," reprinted in the Appendix beginning on page 170.

Abolition of Federal Parole

The most recent change in sentencing came about as part of comprehensive anti-crime legislation signed into law by President Reagan on October 14, 1984. The new law abolishes federal parole and calls for a complete overhaul of the federal sentencing system. The new sentencing provisions are designed to eliminate disparities in prison terms imposed on criminals, having similar records, who are convicted of similar crimes.

The new rules also restrict the broad discretion that federal judges have traditionally exercised in deciding whether or not to send offenders to prison and that parole authorities have used in deciding length of confinement. In short, the law will prevent parole authorities from releasing prisoners on parole before the expiration of their term and will eliminate the United States Parole Commission after a five-year transitional period.

The President is to appoint a new seven-member commission, including three active federal judges, to limit judges to a narrow range of sentences for various federal crimes and to require them to explain in writing any deviations from the guidelines. On one hand, the prosecution is afforded a right to appeal sentences imposed that are more lenient than the prescribed guidelines; on the other, defendants are given the right to appeal sentences that are harsher.

Under the previous law, federal convicts usually were paroled after serving less than half their sentences. With the abolition of parole release, such convicts will be required to serve the full terms to which they are sentenced, with only a small amount of credit allotted for good behavior.

II. Consequences of New Sentencing Laws

When Maine abolished parole, some thought that other states would follow swiftly and in great numbers. Although the movement to abolish parole has not stopped, it has slowed considerably. Few states are currently considering pursuing this course of action. Currently, thirty-two retain parole boards which possess the power to release most inmates after a third to half of their sentences, and eight states have boards empowered to release most inmates at any time after their initial imprisonment.

Part of the reason for this slowing up process appears to be that the sentencing systems replacing parole release have not necessarily proved to be any fairer, more predictable, or less confusing. Moreover, during a time of rapidly increasing prison populations, lawmakers are more and more concerned about shutting off a safety valve that helps to control institutional overcrowding.[2]

In fact, thirteen states call on their parole boards to oversee Emergency Release Programs so that eligible prisoners can be released at times when prison populations exceed government levels. These states are Alaska, Arizona, Arkansas, Idaho, Iowa, Mississippi, Montana, New Jersey, North Carolina, Ohio, and South Carolina.

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[2] Krajick, "Abolishing Parole," p. 32.

Moreover, criminal justice experts are struck by how little the abolition of parole seems to have changed the sentencing patterns of most states. According to recent research, parole abolition seems to have perpetuated, and in some cases worsened, the inequities and injustices that critics claimed were endemic to the indeterminate sentence system in which parole boards figure so prominently.[3]

According to criminal justice expert Kevin Krajick, the sentencing laws in Maine and California illustrate some of the inequities and related sentencing problems. When the legislature in Maine abolished parole, it did not place any meaningful limits on the newly magnified power of the judges and prosecutors. Permissible sentence ranges, already wide, were expanded upward. This allowed judges to mete out sentences ranging from probation to almost unlimited terms of imprisonment to offenders charged with the same crimes. These longer terms for more offenders resulted in prison overcrowding so severe that Maine's governor put before the legislature a bill to reinstate parole release. In addition, many judges in Maine, in an effort to assure that inmates will not be released without some form of supervision, are sentencing large numbers of offenders to "split sentences"--that is, terms of imprisonment to be followed by probation.[4]

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[3] Ibid, p. 33.

[4] Ibid, pp. 34-36.

In California, in order to ensure that determinate sentencing would not increase the amount of real prison time, the legislature structured presumptive terms so that prisoners would serve, on the average, the same amount of time they did when the Adult Authority (the state's parole board) held the release powers. However, before the law went into effect, legislators added a series of amendments that widened the discretion of judges by allowing more time to be added for aggravating circumstances. In addition to lengthening the terms imposed, the new laws in California magnified the discretionary powers of judges and prosecutors.[5]

According to recent research concerning determinate sentencing in states that have abolished parole, sentencing disparity continues to exist regardless of the presence or absence of parole boards because disparity is created by decisions and factors not related to parole. For instance, the classic disparity between rural and urban areas--with rural judges tending to be harsher--continues to exist.[6]

In addition, although critics of parole point to the abbreviated term served by most prisoners because of early release on parole, the average time served in states with and without parole release is remarkably similar because of such mechanisms as "good time" credit and emergency release when prisons are overcrowded.[7]

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[5] Ibid.

[6] Ibid.

Establishing Sentencing Guidelines

To help control sentencing disparity, Minnesota in 1980 became the first state to replace parole release with a set of judicial "sentencing guidelines." The Minnesota guidelines differ from the determinate and flat sentencing statutes in other states. They were constructed and are monitored by a permanent independent commission, not the legislature. The sentence ranges are much narrower than those of other states.

Moreover, written into the law is the unusual requirement that the guideline commission consider the amount of cell space available when setting prison terms--a measure to help regulate prison population.

Also, the guidelines stress alternatives to punishment in prison for nonviolent offenders. Judges are not bound to follow these recommendations, but preliminary research indicates they have. A report issued by the commission in July of 1982 found that there has been a 72% reduction in the amount of imprisonment imposed on offenders convicted of low-severity crimes and a corresponding increase in the amount of time served by more serious offenders.[8]

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[7] "Felony Sentencing in 18 Local Jurisdictions," Bureau of Justice Statistics Bulletin, May 1985, p. 5.

[8] Krajick, "Abolishing Parole," pp. 34-36.

Sentencing Decisions

Although Minnesota has been able to keep its prison population at a steady 95% of capacity--a feat made possible by the guidelines system--some critics claim that the guidelines fail to control the power of the prosecutors. Prosecutors have wide-ranging powers to determine an offender's crime, his prior conviction score, and other supposedly objective factors that enter into a judge's sentencing decision.[9]

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[9] Ibid.

III. Controlling Disparity with Parole Guidelines

As these examples of sentencing legislation illustrate, in states where parole has been abolished, other criminal justice problems emerge--sentencing inequities, abuse of discretion by judges and prosecutors, and prison overcrowding. It is also clear from these examples that many states are making substantial efforts to either improve the sentencing or the parole release process by implementing explicit guidelines.

As discussed in Chapter One of this report, the public and the professionals are dissatisfied with parole release as it currently operates and believe the system should be changed. However, majorities also believe that the parole agency is capable of performing a valuable safety net function to control for sentencing disparities at earlier stages. Similar numbers of judges and lawyers also feel this way.

Kevin Krajick, referring to the role of parole guidelines, aptly defines the problem inherent in sentencing decisions:

> Research indicates that guidelines have performed one of their intended functions, which is to even out obvious disparities and make prison time more predictable. But the main argument against them is that they do not address the question of who is to go to prison in the first place, nor how wide the sentence ranges should be. This is done mostly by the courts, and many prominent critics have pointed out that court sentencing is just as capricious, unpredictable, and fraught with disparities as parole board decisions are.[10]

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[10] Ibid, p. 34.

IV. Public and Professionals Speak Out

In the following statistical section of this chapter, the general public, lawyers, judges, and parole officials address the complex subject of sentencing. The findings indicate the public's awareness of the need for some system of checks and balances. Their responses also reflect a shared belief that someone or some group must possess the power to make decisions about who should go to prison and for how long. The different groups also indicate an awareness of the difficulties involved in transferring decision-making power.

Francis Hotard, Chairman of the Louisiana Board of Parole, comments on this difficulty: "This country is run on a system of checks and balances, and I see the parole boards as part of that. Neither one person nor one group of people should be able to make all the decisions about people's lives. That power is just too awesome."[11]

How to Decide on a Sentence

The general public, lawyers, and judges surveyed are in close agreement concerning the way in which judges should reach their sentences. Over two-thirds of the public (69%), lawyers (66%), and judges (71%) believe that after defendants are found guilty of a crime, judges should both follow written guidelines and use their own discretion.

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[11] Ibid, p. 40.

A quarter of the lawyers (25%) and the judges (21%), but only 9% of the public, believe judges should just use their own discretion. Only 9% of the judges and lawyers and 13% of the general public feel judges should exclusively follow written standards (Table 3.1). This finding suggests that the aim of sentencing guidelines--to promote predictability while allowing for individual judicial discretion--is what most judges themselves would favor.

TABLE 3.1:

After defendants are found guilty of a crime, how should judges arrive at sentences?

	Lawyers %	Judges %	General Public %
Follow written standards	9	9	13
Use their own discretion	25	21	9
Both	66	71	69
Number of respondents	(104)	(102)	(1,004)

A majority of the surveyed lawyers (63%) and judges (57%) agree with the statement that written, explicit sentencing guidelines can provide fairness and equity in determining sentences. It is interesting to note that nearly equal numbers of judges (21%) agree strongly with this statement as do those who strongly disagree (26%). Clearly this is a topic that evokes strong opinions (Table 3.2).

TABLE 3.2:

Please tell me if you agree strongly, agree somewhat, disagree somewhat, or disagree strongly with the following statement: Written, explicit sentencing guidelines can provide fairness and equity in determining sentences.

	Lawyers %	Judges %
Agree strongly	23	21
Agree somewhat	40	36
Disagree somewhat	14	13
Disagree strongly	20	26
Don't know/No answer	2	5
Number of respondents	(104)	(102)

Is the Sentence Too Severe?

In addition to the need for sentencing equity, the concept that "the punishment should fit the crime" is of major concern to Americans. This report reveals that while many members of the general public feel that judges are too lenient on offenders, judges have the impression that the public is satisfied with their sentencing judgments. Over half (53%) of the surveyed judges report that the public perceives them as judging fairly. Only 20% feel the public sees them as too lenient (Table 3.3)

TABLE 3.3:

In sentencing criminals, do you think the public perceives you as:

	Judges %
Too lenient	20
Too harsh	7
Judging fairly	53
Don't know/No answer	22
Number of respondents	(102)

Public Speaks Out

However, the public's perception of judicial leniency appears to be a major factor in their overall dissatisfaction with the criminal justice system. Seven out of ten Americans (72%) agree that most judges are not harsh enough on criminals, with nearly half (48%) agreeing strongly. Not surprisingly, most of the judges (68%) disagree with this statement, with a third (32%) disagreeing strongly. In addition, nearly two-thirds (61%) of the surveyed lawyers disagree with this statement (Table 3.4A).

TABLE 3.4A:

Please tell me if you agree strongly, agree somewhat, disagree somewhat, or disagree strongly with the following statement: Most judges are not harsh enough on criminals.

	Lawyers %	Judges %	General Public %
Agree strongly	13	15	48
Agree somewhat	20	10	24
Disagree somewhat	40	36	11
Disagree strongly	21	32	9
Don't know/No answer	5	7	8
Number of respondents	(104)	(102)	(1,004)

Interestingly, this belief concerning a judge's leniency is not related to personal experience as a victim of crime. Americans who have never attended court as a victim of a crime (48%) are as likely to strongly agree that most judges are not harsh enough as those Americans who have been victims of a crime (47%) (Table 3.4B).

TABLE 3.4B:

Please tell me if you agree strongly, agree somewhat, disagree somewhat, or disagree strongly with the following statement: Most judges are not harsh enough on criminals.

BY WHETHER ATTENDED COURT AS A VICTIM OF A CRIME

	All Respondents %	Yes %	No %
Agree strongly	48	47	48
Agree somewhat	24	18	25
Disagree somewhat	11	11	11
Disagree strongly	0	17	8
Don't know/No answer	8	7	7
Number of respondents	(1,004)	(203)	(796)

Not surprisingly, those members of the public who were victims of a violent crime are nearly twice as likely (74%) to strongly agree that judges are too lenient as those who were victims of a property crime (40%) (Table 3.4C).

TABLE 3.4C:

Please tell me if you agree strongly, agree somewhat, disagree somewhat, or disagree strongly with the following statement: Most judges are not harsh enough on criminals.

BY TYPE OF CRIME

	All Respondents %	Property %	Violent %
Agree strongly	48	40	74
Agree somewhat	24	28	2
Disagree somewhat	11	12	13
Disagree strongly	9	18	10
Don't know/No answer	8	3	0
Number of respondents	(1,004)	(39)	(28)

Significant differences also exist among types of attorneys. Prosecutors are much more likely (22%) to agree strongly that most judges are not harsh enough, while only 6% of defense attorneys feel this way (Table 3.4D).

TABLE 3.4D:

Please tell me if you agree strongly, agree somewhat, disagree somewhat, or disagree strongly with the following statement: Most judges are not harsh enough on criminals.

BY TYPE OF ATTORNEY

	All Lawyers %	Defense %	Prosecution %
Agree strongly	13	6	22
Agree somewhat	20	13	28
Disagree somewhat	40	44	36
Disagree strongly	21	35	6
Don't know/No answer	5	2	8
Number of respondents	(104)	(52)	(50)

What Kind of Sentence

Since a majority of Americans agree that most judges are not harsh enough on criminals, it is not surprising that many Americans appear to favor a prison term as a form of punishment for certain offenders. More than half the public (58%) disagrees with the statement that a judge should impose a prison or jail sentence only as a last resort, with a striking four out of ten Americans (40%) disagreeing strongly. Half the lawyers (54%) and judges (50%) share the public's point of view on this issue, although they are less likely to disagree strongly (Table 3.5A).

TABLE 3.5A:

Please tell me if you agree strongly, agree somewhat, disagree somewhat, or disagree strongly with the following statement: A judge should impose a jail sentence only as a last resort.

	Lawyers %	Judges %	General Public %
Agree strongly	11	14	17
Agree somewhat	34	29	16
Disagree somewhat	26	25	18
Disagree strongly	28	25	40
Don't know/No answer	2	7	9
Number of respondents	(104)	(102)	(1,004)

Significant differences also emerge based on type of attorney. In this instance, defense attorneys are far more likely (15%) to agree strongly that a judge should impose a jail sentence as a last resort, compared to only 6% of the prosecutors who share this opinion (Table 3.5B).

TABLE 3.5B:

Please tell me if you agree strongly, agree somewhat, disagree somewhat, or disagree strongly with the following statement: A judge should impose a jail sentence only as a last resort.

BY TYPE OF ATTORNEY

	All Respondents %	Defense %	Prosecutor %
Agree strongly	11	15	6
Agree somewhat	34	48	18
Disagree somewhat	26	19	32
Disagree strongly	28	17	40
Don't know/No answer	2	0	4
Number of respondents	(104)	(52)	(50)

Should the Sentence Be Changed

An extremely pertinent question fundamental to parole practice and theory is whether or not a judge's sentence ought to be changed under certain circumstances. Although the public believes that parole release practices need to be changed, more than half (58%) **do not think** that once a judge sentences an offender to a prison term the sentence should never be changed under any circumstance. In light of the debate over sentencing practices, this is a very important finding.

Judges and lawyers are as convinced as the public that certain circumstances warrant a change in the original sentence. Sixty percent (60%) of the judges and 58% of the lawyers **do not think** that a sentence should never be changed (Table 3.6).

TABLE 3.6:

Do you think that once a judge sentences an offender to a prison term that the sentence should never be changed under any circumstance?

	Lawyers %	Judges %	General Public %
Yes	33	31	33
No	58	60	58
Don't know/No answer	9	9	9
Number of respondents	(104)	(102)	(1,004)

Why Change the Sentence

Although many Americans are dissatisfied with what they perceive is a lenient sentencing system, they are also sensitive to the need for leniency to be administered when warranted. Evidence that the offender is innocent of the crime is the most appropriate reason for changing the original sentence, according to all groups surveyed who feel a sentence can be changed under certain circumstances. In fact, eight out of ten Americans (83%) and nine out of ten lawyers (90%) and judges (95%) share this point of view. In addition, evidence that the original sentence was unwarrantedly unfair also scored high as a reason to change the sentence. Seven out of ten Americans (71%) and nearly nine out of ten lawyers (87%) and judges (87%) feel this way.

Judges were the most likely (72%) to rate substantial efforts at rehabilitation as a criteria for change; however, 58% of the lawyers and 53% of the public also frequently cite this as a reason for changing a sentence. This finding reflects the high priority judges and lawyers give to in-prison rehabilitation as discussed in Chapter One.

Other reasons often cited by respondents include good conduct in prison; substantial assistance to prison officials; serious illness; substantial achievement in prison programs such as learning a trade; and assistance to the government in the prosecution of other criminals.

On another critical issue, the public did agree with the lawyers: only 16% of the public and 13% of the lawyers feel that overcrowding in prison and jails constitutes a valid reason for changing a sentence, compared to 34% of the judges who cite this as a reason. This is important considering recent legislation around the country allowing for the release of prisoners based on prison overcrowding.

Misconduct in prison and changing public attitudes towards offenses were also cited infrequently by all three surveyed groups (Table 3.7A).

Overall, defense attorneys were more likely than prosecutors to frequently cite reasons for changing the sentence. On only one issue are prosecutors more likely than defense attorneys to frequently cite a particular circumstance--assisting the government in prosecuting other criminals (Table 3.7B).

TABLE 3.7A:

Indicate which of the following circumstances you feel are appropriate reasons for changing the original sentence (choose all that apply).

	Lawyers %	Judges %	General Public %
Evidence that offender is innocent	90	95	83
Original sentence was unwarrantedly unfair	87	87	71
Substantial efforts at rehabilitation	58	72	53
Good conduct in prison	62	62	44
Substantial assistance to prison officials	58	59	30
Serious illness	54	62	37
Achievement in prison programs	56	58	39
Assist government in prosecution of other criminals	59	51	34
Misconduct in prison	45	39	31
Changing public attitudes	31	30	29
Overcrowding in prisons/jails	13	34	16
Don't know/No answer	0	1	16
Number of respondents	(91)	(76)	(583)

TABLE 3.7B:

Indicate which of the following circumstances you feel are appropriate reasons for changing the original sentence (choose all that apply).

BY TYPE OF ATTORNEY

	Defense %	Prosecutor %	All Respondents %
Evidence that offender is innocent	92	88	90
Original sentence was unfair	94	78	87
Substantial efforts at rehabilitation	71	48	58
Good conduct in prison	71	48	62
Assist government in prosecuting other criminals	55	65	59
Substantial assistance to prison officials	63	50	58
Substantial efforts at rehabilitation	71	40	58
Achievement in prison programs	73	33	56
Serious illness	63	40	54
Misconduct in prison	49	43	45
Changing public attitudes	41	18	31
Overcrowding in prisons/jails	20	5	13
Number of respondents	(49)	(40)	(91)

Who Should Change the Sentence?

In light of recent criticism concerning the authority of parole boards, it is very interesting that respondents in all three groups, who feel there are circumstances under which a sentence ought to be changed, express strong support for an independent board making the decision to change the sentence. Almost half the public (49%) and nearly as large a percentage of the judges and lawyers (43%) feel this way.

Not surprisingly, the idea of empowering judges to make this decision is also supported by a large number of lawyers (49%) and judges (46%). However, only a quarter (24%) of the public feel this way. Few respondents cite the governor or the warden as candidates for changing offenders' sentences (Table 3.8).

TABLE 3.8:

Who should make the decision to change the prison term?

	Lawyers %	Judges %	General Public %
The judge	49	46	24
The governor	3	1	9
The warden	0	3	11
A board independent of prison	43	43	49
Don't know/No answer	4	7	7
Number of respondents	(91)	(76)	(1,004)

This finding underscores the support given by all three groups for the principle of parole release. In theory, all three groups uphold the role of an independent board making decisions that are, in effect, judicial. But the public and the professionals are critical of how the system operates in practice.

Considerations When Sentencing

Although the parole boards in most states still determine the length of time the offender will serve in prison, the sentencing process begins with the judge's ruling. It is therefore important to understand the pressures facing the sentencing judge when faced with these decisions. According to this report, more than half (52%) of the judges say that their sentencing decisions are influenced by overcrowded prisons and jails. Public opinion (31%), media attention to a case (22%), and lack of confidence in probation services (26%) appear to be less important (Table 3.9).

TABLE 3.9:

In setting sentences for offenders in court, are you influenced by the following?

	Judges %
Overcrowded prisons and jails	52
Public opinion	31
Lack of confidence in probation services	26
Media attention	22
None of the above	33
Other	13
Don't know/No answer	4
Number of respondents	(102)

Facts About Judges' Sentences

As documented in The Figgie Report on Fear of Crime, the public is afraid of crime and feels crime--including violent crime--is on the rise. Given this perception, it is important to note that there is a discrepancy between the fear of violent crime and the incidence of violent crime. Although more than a quarter of all households were touched by crime in 1984, only 10% of all crimes committed were violent.

The judges surveyed for this report imposed sentences in 1984 that correspond to these national statistics. Probation as a form of punishment is far more prevalent than even one- to two-year prison sentences.* This indicates that despite the public's fear of an increase in violent crimes, most crimes that go before judges are less serious in nature--crimes that warrant only probation, not prison terms. However, the public may be misinterpreting this high percentage of probation sentences as judicial leniency, rather than a representation of the high number of less serious crimes being committed.

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* Probation sentences may be of two general types--suspension of the execution of a sentence to incarceration or suspension of the imposition of a sentence. In the first type, a sentence to a term of confinement is imposed and suspended on the condition of future good behavior while under supervision in the community. In the second type, following conviction, the case is continued without a sentence while the offender is placed under supervision in the community. Should new offense or violation of the conditions of release occur, the offender is subject to the imposition of a sentence on the original conviction by the judge who had initially suspended its imposition. ("Probation and Parole 1983," Bureau of Justice Statistics Bulletin, p. 3.)

The Figgie Report Part V reveals that one-third (32%) of the surveyed judges report that between 50% and 75% of the sentences meted out in 1984 were probation or other alternatives to punishment in prison. One out of seven judges (14%) say that more than three-quarters (between 76% and 99%) of the judgments they rendered in 1984 were probation or other alternatives to prison. Only one in ten judges (11%) say that probation comprised between 20% and 49% of sentences. Only [illegible]% state that none of their sentences in 1984 were probation. One-quarter (27%) did not know (Table 3.10A).

One-quarter (27%) of the judges assert that prison terms of a year or under comprised 20% of their sentences. One in five (19%) say they amounted to between 20% and 49% of their sentences. One in ten (10%) report they came to between 50% and 75% (Table 3.10B).

While nearly a quarter (21%) of the judges report that less than 20% of their sentences were for one to two years, nearly twice as many judges (41%) assert they did not sentence anyone to a prison term of one to two years in 1984 (Table 3.10C).

Furthermore, 42% of judges report they did not sentence anyone to a prison term of three to five years, while 23% report that a sentence of this length made up less than 20% of their total sentences for 1984 (Table 3.10D).

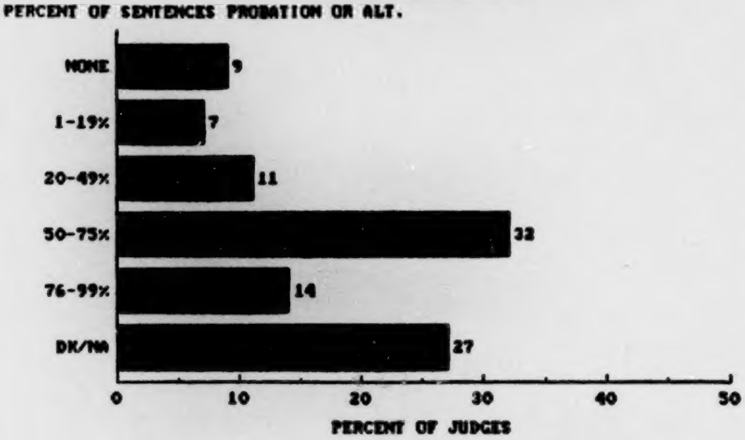
Half (51%) of the surveyed judges did not sentence anyone in 1984 to a prison term of six to ten years, while 19% report such a sentence comprised less than 20% of their sentences (Table 3.10E).

Half (50%) did not sentence anyone to a term of eleven to twenty-five years. Less than a quarter (23%) claim this sentence made up under 20% of their 1984 sentences (Table 3.10F).

Finally, half (52%) of the judges did not sentence anyone in 1984 to life imprisonment. One in four (24%) said this sentence comprised less than 20% of their total sentences for the year (Table 3.10G).

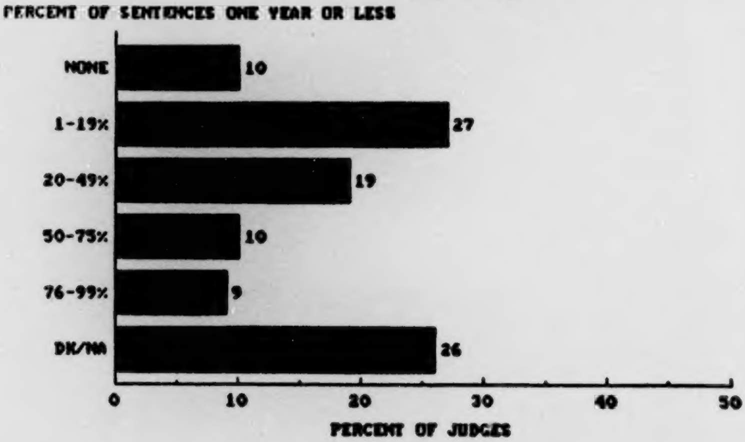
It is important to note that probation as a form of punishment far exceeds the imposition of even one-year prison terms. These sentences reflect the high proportion of less serious crimes being committed. They also reflect the effort judges are making to sentence offenders of less serious crimes to alternatives to punishment in prison.

TABLE 3.10A
PROBATION OR OTHER ALTERNATIVE SENTENCES REACHED BY JUDGES



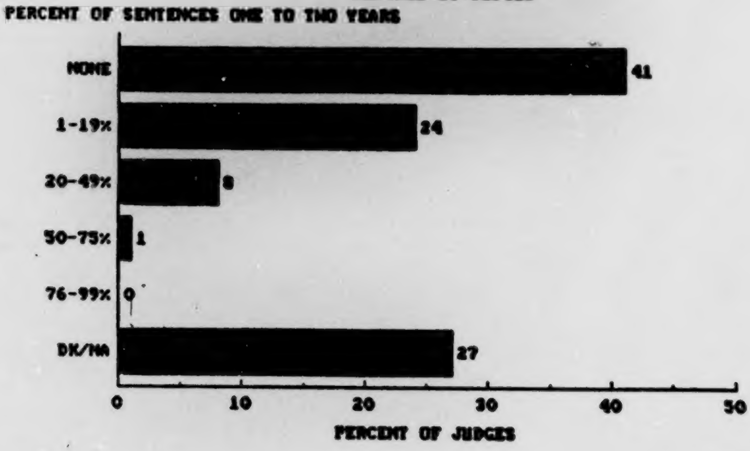
NUMBER OF RESPONDENTS (102)

TABLE 3.10B
PRISON SENTENCES OF ONE YEAR OR LESS REACHED BY JUDGES



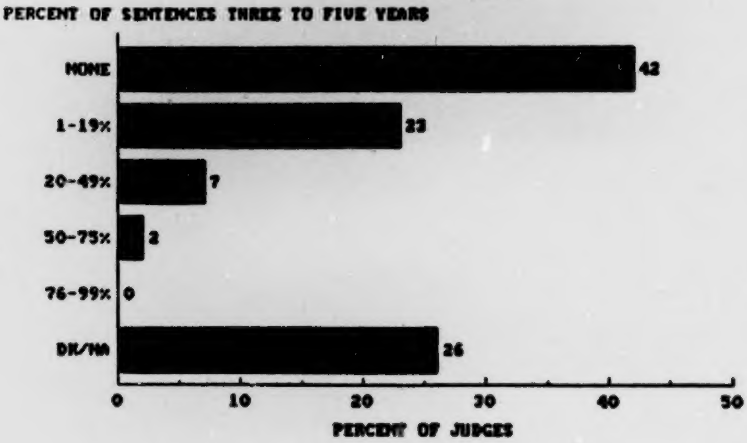
NUMBER OF RESPONDENTS (102)

TABLE 3.10C
PRISON SENTENCES OF ONE TO TWO YEARS REACHED BY JUDGES



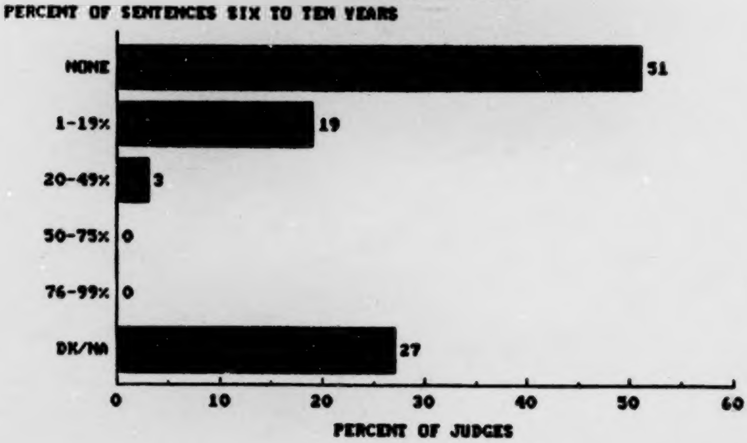
NUMBER OF RESPONDENTS (102)

TABLE 3.10D
PRISON SENTENCES OF THREE TO FIVE YEARS
REACHED BY JUDGES



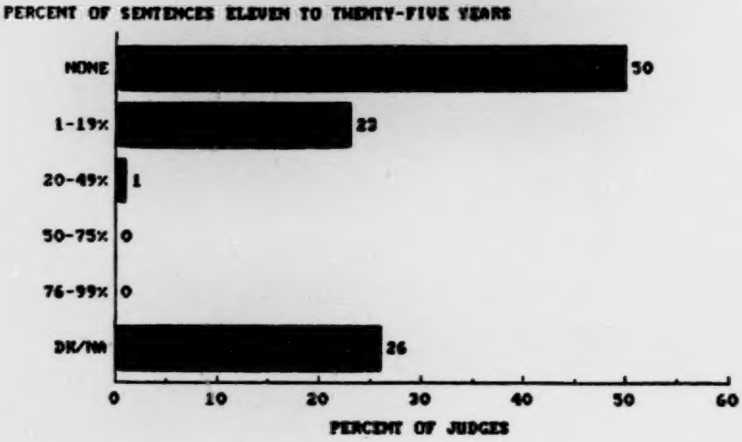
NUMBER OF RESPONDENTS (102)

TABLE 3.10E
PRISON SENTENCES OF SIX TO TEN YEARS
REACHED BY JUDGES



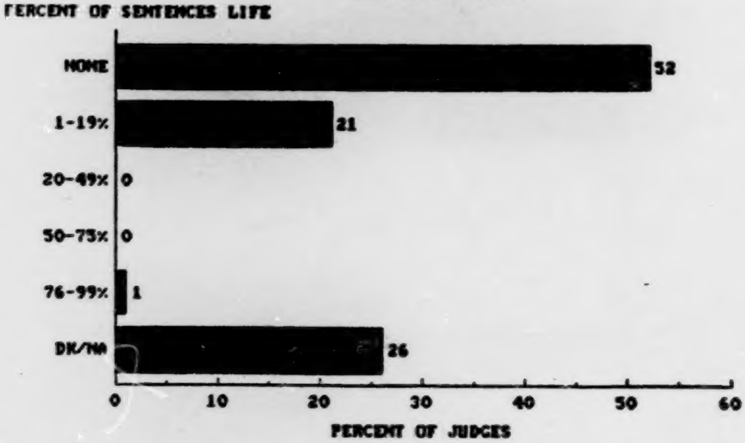
NUMBER OF RESPONDENTS (102)

TABLE 3.10F
PRISON SENTENCES OF ELEVEN TO TWENTY-FIVE YEARS
REACHED BY JUDGES



NUMBER OF RESPONDENTS (102)

TABLE 3.10G
LIFE SENTENCES
REACHED BY JUDGES



NUMBER OF RESPONDENTS (102)

Probation/Parole vs. Prison Population

The following table presents a comparison of the sentenced prison population to the probation and parole population, 1979 to 1983.[12]

TABLE 3.11

Comparison of the Sentenced Prison Population to the Probation and Parole Populations, 1979 to 1983.

Year	Sentenced Prison Population*	Probation Population	Ratio of Probationers to Prisoners	Parole Population	Ratio of Prisoners to Parolees
1979	301,470	1,086,535	3.60	218,690	1.38
1980	315,974	1,118,097	3.54	220,438	1.43
1981	353,673	1,225,934	3.47	223,774	1.57
1982	395,948	1,357,264	3.43	224,604	1.76
1983	419,820	1,502,247	3.58	251,708	1.67

As this chart indicates, there were three and a half times the number of probationers as there were prisoners in 1983. These figures are borne out by the findings of this report--namely that probation is the sentence most often meted out by the judges surveyed. Moreover, in 1983 there were one and a half times the number of probationers as there were parolees.

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* Defined as prisoners in state/federal institutions with sentences greater than one year.

[12] "Probation and Parole 1983."

Sentencing Decisions

In spite of the high number of offenders being sentenced to punishment outside of prison, respondents surveyed for this report cite prison overcrowding as the most critical issue facing the parole system today. Moreover, a majority of judges surveyed assert that prison overcrowding influences their sentencing decisions more than any other factor. The causes of institutional overcrowding and the role parole release plays in regulating prison populations are explored in the next chapter.

CHAPTER FOUR

Report findings indicate that the criminal justice community strongly believes that prison overcrowding is one of the most critical issues facing the parole system today. Chapter Four examines the causes and consequences of institutional overcrowding; the costs of building and maintaining prisons; the relationship between increased incarceration and the crime rate; and the impact of parole abolition on prison populations. The public and the experts voice their opinions on possible solutions to overcrowding, and the public takes a stand in support of the rights of prisoners.

CHAPTER FOUR: PRISON OVERCROWDING AND CONDITIONS

> "Crowded conditions in prison and lack of funds discourage rehabilitation and training efforts. Convicts should be provided with educational opportunities and the chance to learn job skills."
>
> —District Parole Supervisor

I. Facts, Causes, and Consequences of Overcrowding

The criminal justice community emphatically agrees that this country's crisis in corrections is synonymous with institutional overcrowding. As indicated by the findings in this report, lawyers, judges, and paroling authorities identify prison overcrowding as a major issue facing the parole system today.

The total number of prisoners in state and federal correctional facilities at year-end 1984 was 463,866. During 1984, 26,618 prisoners were incarcerated. This translates into a 40% increase in the prison population since 1980.[1]

In many states crowding has resulted in double and triple bunking as well as the housing of inmates in storage rooms, hallways, tents, and sheds. In at least twenty states, the prisons are so jammed that correctional officials are refusing to accept sentenced inmates, who instead must wait in equally crowded local jails for months or years until a prison bed becomes available.[2]

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[1] "Prisoners in 1984," Bureau of Justice Statistics Special Report, 1985, p. 1.

[2] Ibid, p. 5.

Costly Consequences

Prisons are very costly. Recent estimates show that to build and operate prisons containing 100,000 new beds will cost taxpayers a total of $70 billion over the next thirty years in addition to the more than $6 billion it costs annually to run the existing system. The construction costs alone are staggering. About $4.7 billion in prison and jail construction is planned across the country over the coming decade.[3]

Concern Over Prison Violence

Because of these crowded conditions, prison officials are gravely concerned about prison violence. In many institutions, inmate population disproportionately outnumbers the prison staff who therefore feel they are losing control of the prisons. In addition, many prisoners are unable to take advantage of educational, vocational, and other rehabilitation programs.

Crowding also has a psychological effect and attempts have been made to determine the optimum square footage desirable for inmates' confinement/sleeping quarters. Recent surveys indicate that about 65% of the nation's state and federal prisoners are held in less than psychologically healthy living conditions.[4]

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[3] Jericho, Newsletter of the National Moratorium on Prison Construction, 1983.

[4] The Correctional Crisis: Prison Populations and Public Policy, Washington, D.C.: U.S. Department of Justice, 1983.

Violation of Human Rights

As a result of these conditions, almost three-fourths of the states in this country are now either under court order or are involved in litigation concerning prison overcrowding. This litigation has concerned primarily rights guaranteed by the Eighth Amendment of the Constitution of the United States, which provides that every citizen--including prison inmates--has the absolute right to freedom from cruel and unusual punishment.

One legal interpretation of this amendment suggests three broad criteria for determining if the amendment is being violated:

- Whether or not the punishment shocks the general conscience of a civilized society;
- Whether or not the punishment is unnecessarily cruel;
- Whether or not the punishment goes beyond legitimate penal aims.[5]

Under application of these guidelines, federal and state courts have found specific practices (for example, physical abuse or crowding), the totality of conditions of confinement, and even entire state prison systems to be in violation of the Eighth Amendment.[6]

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[5] "Prisoners' Legal Rights: A Bibliography of Cases and Articles," Resource Center on Correctional Law and Legal Services, American Bar Association, 1974.

[6] Ibid.

Why Are Prisons so Crowded?

The major reason for prison overcrowding has been identified as a criminal justice system that has become tough on crime very quickly. The rate of incarceration in this country was 93 per 100,000 population in 1972; it is now 177 per 100,000. New prisons cannot be built fast enough to house the new offenders. If recent trends continue, for example, Texas, California, and Florida could build a new 500-bed prison every month and never reduce overcrowding.

According to American Prisons and Jails, the most comprehensive study of prison populations to date, the largest share of prison population growth is due to an increase in the number of prisoners sentenced for property and public order crime, with only a small fraction of the growth attributable to greater numbers of violent offenders. Minor offenders are being imprisoned for longer terms because of changes in sentencing patterns around the country.[7]

Impact of Parole Abolition

In addition to the new sentencing patterns around the country, nine states have abolished parole, another factor which experts contend contributes to prison overcrowding. At the Maine State Prison, for instance, the average prison stay has doubled in the five years since the legislature abolished parole. In February

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[7] Kevin Krajick and Steve Gettinger, Overcrowded Time: Why Prisons Are So Crowded and What Can Be Done, New York: The Edna McConnell Clark Foundation, 1982, p. 7.

1982, the state's prison population reached an all-time high, with the prisons full and many inmates overflowing into county jails.[8]

Relationship Between Prison Population and Crime Rates

Interestingly, the increased number of offenders in prison does represent a corresponding increase in the number of crimes being committed. Most experts who have studied this apparent cause and effect relationship conclude that there is no link between the incarceration rate and the crime rate. One think tank, the American Foundation, examined patterns in all fifty states and found that the crime rate in each had nothing to do with whether or not the state incarcerated a large number of offenders.[9]

The main reason why there is no correlation between prison population and crime rates is explained by the sheer weight of numbers. In proportion to the number of crimes committed, many of them unreported, few criminals are convicted and imprisoned. Therefore, any variation in prison population has little impact on the continuous activity of crime. For example, an estimated one-half of all serious crimes committed are never reported. In addition, police make arrests for only one in every five crimes reported, and of those arrested, slightly more than half are convicted.[10]

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[8] Ibid, p. 10.

[9] Doug Struck, "The Prison Population Rises While the Crime Rate Drops," Baltimore Sun, September 4, 1984.

[10] Ibid.

Alternatives to Incarceration

In response to prison overcrowding, many states are turning increasingly to alternatives to prison, such as community service and work-release programs. These states view alternatives as another form of punishment. (See Chapter Five for a complete discussion of this issue.)

In the following sections of this chapter, the general public and professionals express their ideas about the causes of prison overcrowding and offer solutions to this critical problem. In addition, members of the general public express their attitudes about prisoners' rights and reveal that they are willing to help finance improved prison conditions.

II. Expert and Public Opinion on Prison Overcrowding Issues

Causes of Prison Overcrowding

While there is a consensus that prison overcrowding is one of the most critical issues facing the parole system today, the experts and the public disagree as to the number one cause. The public's point of view again reveals its discouragement about crime and the way in which the criminal justice system is addressing the problems. Three-quarters of the public (75%) identify increased crime rates as the principal cause of prison overcrowding. Half (50%) attribute it to an increase in the number of potential offenders, while 40% say it is due to an increased commitment to incarcerate. A third (36%) believe prison overcrowding is due to either the increased use of longer sentences or changing policy decisions regarding crime.

As these findings indicate, a majority of Americans do not believe that the penal system has gotten tougher on criminals, and despite recent crime rate statistics that show crime is not rising significantly, the public contends that higher crime rates have led to overcrowded prisons.

According to figures from the Bureau of Census, the rate of violent crime rose very little between 1973 and 1979, only 3.6%. Some experts debate whether the crime rate for violent crimes has in fact risen at all.[11]

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[11] Krajick and Gettinger, Overcrowded Time, p. 7.

Expert Point of View

Due to their different perspectives on the judicial system, judges, lawyers, and parole authorities vary somewhat on which factors they consider to be the main cause of prison overcrowding.

Judges stress the increase in crime rates as a leading cause of prison overcrowding. Two-thirds of the judges (67%) cite rising crime as a principal reason and 60% cite the increase in the number of potential offenders. Less than half (48%) of the judges attribute overcrowding to the increased use of longer sentences. This confirms the statistics given in Chapter Three of this report, which indicate that a majority of judges today are not giving longer prison sentences.

Lawyers are more inclined to believe that the current prison overcrowding is a result of an increased commitment to incarcerate offenders. Seven out of ten lawyers (68%) cite this as a main cause. Sixty-three percent (63%) say overcrowding is largely due to changing policy decisions regarding crime and six out of ten (60%) say it is due to the increased use of longer sentences. An increase in crime is rated fourth on a list of five factors, with 59% asserting it to be a major cause of overcrowding (Table 4.1A).

TABLE 4.1A:

The current overcrowding in prisons is largely due to which of the following?

	Lawyers %	Judges %	General Public %
Increased commitment to incarcerate	68	58	40
Increase in crime rate	59	67	75
Increase in number of potential offenders	58	60	50
Changing policy decisions regarding crime	63	54	36
Increased use of longer sentences	60	48	36
Other	3	2	0
Don't know/No answer	0	1	6
Number of respondents	(104)	(102)	(1,004)

Parole authorities are the most inclined to believe that prison overcrowding is largely due to a "get tough" policy on criminals in the form of an increased commitment to incarcerate offenders. Nine out of ten (91%) federal parole officers and eight out of ten (78%) state officers attribute prison overcrowding to this increased commitment. The second most commonly cited reason is changing policy decisions regarding crime. Parole authorities, on the whole, do not consider an increase in the crime rate to be one of the major causes of current prison overcrowding (Table 4.1B).

TABLE 4.1B:

The current overcrowding in prisons is largely due to which of the following?

	Federal Supervisors & Officers %	State Supervisors & Officers %	Federal Board Members %	State Board Members %
Increased commitment to incarcerate	91	78	81	100
Changing policy decisions regarding crime	70	75	80	63
Increased use of longer sentences	61	64	80	57
Increase in number of potential offenders	43	47	40	38
An increase in crime rate	37	44	0	42
Other	20	20	20	27
Don't know/No answer	0	0	0	0
Number of respondents	(46)	(102)	(5)	(52)

The Abolition of Parole Release

The groups surveyed demonstrate an awareness of the complex interconnection among factors within the criminal justice system. A majority of respondents in all groups believe that if parole release were abolished, prisons would become even more crowded.

Virtually all of the lawyers (96%) claim that the abolition of parole would lead to greater overcrowding. Eighty-five percent (85%) of the judges and three-quarters (74%) of the public also share this belief. A similar majority of parole authorities agree that the abolition of parole would lead to more overcrowding (Tables 4.2A and 4.2B).

TABLE 4.2A:

If parole release were abolished, do you think it would result in more overcrowded prisons?

	Lawyers %	Judges %	General Public %
Yes	96	85	74
No	3	10	21
Don't know/No answer	1	5	5
Number of respondents	(104)	(102)	(1,004)

TABLE 4.2B:

If parole release were abolished, do you think it would result in more overcrowded prisons?

	Federal Supervisors & Officers %	State Supervisors & Officers %	Federal Board Members %	State Board Members %
Yes	63	85	100	83
No	28	11	0	4
Don't know/No answer	9	4	0	8
Number of respondents	(46)	(102)	(5)	(52)

Possible Solutions to Prison Overcrowding

A number of possible solutions to the overcrowding problem were suggested to each of the groups surveyed. The recommendations that received the most support reveal that respondents make a distinction between punishing serious offenders as opposed to punishing those whose crimes are less severe. On one end of the spectrum, strong support is given to building more prisons and reserving prisons for those who commit violent crimes. On the other end is support for diverting more offenders into alternative programs and allowing certain offenders to quality for early parole releases.

Build More Prisons

Lawyers and judges express overwhelming support for the building of more prisons. Ninety percent (90%) of both groups agree with this solution, and a majority strongly agree. Three-quarters of the public (75%) also agree that this is one potential solution to the overcrowding problem. Parole authorities are somewhat less supportive of this solution. Sixty-three percent (63%) of the state parole officers and 54% of the state board members agree that building more prisons would solve overcrowding (Tables 4.3A and 4.3B).

TABLE 4.3A:

Please tell me if you agree strongly, agree somewhat, disagree somewhat, or disagree strongly with the following solution to prison overcrowding: Build more prisons.

	Lawyers	Judges	General Public
	%	%	%
Agree strongly	55	60	54
Agree somewhat	35	30	21
Disagree somewhat	8	4	7
Disagree strongly	2	4	16
Don't know/No answer	1	2	4
Number of respondents	(104)	(102)	(1,004)

TABLE 4.3B:

Please tell me if you agree strongly, agree somewhat, disagree somewhat, or disagree strongly with the following solution to prison overcrowding: Build more prisons.

	Federal Supervisors & Officers	State Supervisors & Officers	Federal Board Members	State Board Members
	%	%	%	%
Agree strongly	17	26	20	21
Agree somewhat	37	37	80	33
Disagree somewhat	30	18	0	23
Disagree strongly	15	18	0	19
Don't know/No answer	0	1	0	4
Number of respondents	(46)	(102)	(5)	(52)

Reserve Prisons for Serious Criminals

A second commonly cited solution is to reserve prisons primarily for those whose crimes are the most severe. Seven in ten lawyers (72%) and judges (68%) agree with this, and an equal percentage (71%) of the general population also agree. Slightly higher numbers of parole authorities agree with this as a potential solution to the overcrowding problem (Tables 4.4A and 4.4B).

TABLE 4.4A:

Please tell me if you agree strongly, agree somewhat, disagree somewhat, or disagree strongly with the following solution to prison overcrowding: Reserve prisons primarily for those whose crimes are the most severe.

	Lawyers %	Judges %	General Public %
Agree strongly	41	39	44
Agree somewhat	31	29	27
Disagree somewhat	14	16	8
Disagree strongly	10	14	18
Don't know/No answer	4	2	4
Number of respondents	(104)	(102)	(1,004)

TABLE 4.4B:

Please tell me if you agree strongly, agree somewhat, disagree somewhat, or disagree strongly with the following solution to prison overcrowding: Reserve prisons primarily for those whose crimes are the most severe.

	Federal Supervisors & Officers	State Supervisors & Officers	Federal Board Members	State Board Members
	%	%	%	%
Agree strongly	30	42	20	48
Agree somewhat	46	35	60	29
Disagree somewhat	15	14	0	10
Disagree strongly	9	9	20	10
Don't know/No answer	0	0	0	4
Number of respondents	(46)	(102)	(5)	(52)

Early Parole Release for Certain Offenders

A large majority of the experts also agree with allowing certain offenders to qualify for parole release sooner to ease prison overcrowding. Nearly eight in ten (77%) judges, 82% of state parole officers, and two-thirds (66%) of the lawyers agree with this solution. The public, although less supportive of this policy, still indicates majority support (58%). One-quarter of the public (28%) strongly disagrees with allowing certain offenders to qualify for parole release sooner (Tables 4.5A and 4.5B).

TABLE 4.5A:

Please tell me if you agree strongly, agree somewhat, disagree somewhat, or disagree strongly with the following as a possible solution to prison overcrowding: Allow certain offenders to qualify sooner for parole release.

	Lawyers %	Judges %	General Public %
Agree strongly	23	20	26
Agree somewhat	43	57	32
Disagree somewhat	6	7	10
Disagree strongly	23	14	28
Don't know/No answer	5	3	4
Number of respondents	(104)	(102)	(1,004)

TABLE 4.5B:

Please tell me if you agree strongly, agree somewhat, disagree somewhat, or disagree strongly with the following as a possible solution to prison overcrowding: Allow certain offenders to qualify sooner for parole release.

	Federal Supervisors & Officers %	State Supervisors & Officers %	Federal Board Members %	State Board Members %
Agree strongly	24	39	40	44
Agree somewhat	48	43	60	40
Disagree somewhat	20	12	0	8
Disagree strongly	9	5	0	2
Don't know/No answer	0	1	0	6
Number of respondents	(46)	(102)	(5)	(52)

Alternative Programs for Certain Offenders

Diverting more offenders from prison into alternative programs also receives broad support. Two-thirds each of the public (67%), judges (69%), and lawyers (66%) support this approach. However, parole authorities are by far the most supportive group. Majorities of state parole officers (87%), federal officers (81%), state board members (86%), and federal board members (80%) advocate the utilization of alternatives as a way to ease prison overcrowding (Tables 4.6A and 4.6B). The issue of alternatives to punishment in prison is the subject of Chapter Five of this report.

TABLE 4.6A:

Please tell me if you agree strongly, agree somewhat, disagree somewhat, or disagree strongly with the following as a possible solution to prison overcrowding: Divert more offenders into alternative programs.

	Lawyers %	Judges %	General Public %
Agree strongly	37	31	31
Agree somewhat	29	38	36
Disagree somewhat	18	8	9
Disagree strongly	13	18	19
Don't know/No answer	3	5	5
Number of respondents	(104)	(102)	(1,004)

TABLE 4.6B:

Please tell me if you agree strongly, agree somewhat, disagree somewhat, or disagree strongly with the following as a possible solution to prison overcrowding: Divert more offenders into alternative programs.

	Federal Supervisors & Officers %	State Supervisors & Officers %	Federal Board Members %	State Board Members %
Agree strongly	33	53	20	48
Agree somewhat	48	34	60	38
Disagree somewhat	15	9	0	4
Disagree strongly	4	4	0	2
Don't know/No answer	0	0	20	8
Number of respondents	(46)	(102)	(5)	(52)

Possible solutions which do not receive majority support from any of the surveyed groups include restricting the powers of the courts to impose imprisonment, basing sentencing policies on current prison population, and shortening the time served for those in prison. In fact, majorities strongly disagree with these options. It is interesting to note that while many respondents support the concept of allowing certain offenders to qualify for parole release sooner, they strongly disagree with shortening the term of imprisonment.

In fact, of all the surveyed groups, the general public is the most likely to strongly disagree with shortening prison sentences. Although both the public and the professionals want to see serious offenders serve appropriately long prison terms, these groups also advocate punishing less serious offenders through alternative community programs (Tables 4.7A and 4.7B, 4.8A and 4.8B, and 4.9A and 4.9B).

TABLE 4.7A:

Please tell me if you agree strongly, agree somewhat, disagree somewhat, or disagree strongly with the following as a possible solution to prison overcrowding: Restrict the powers of the courts to impose imprisonment:

	Lawyers %	Judges %	General Public %
Agree strongly	3	2	13
Agree somewhat	3	1	11
Disagree somewhat	12	4	10
Disagree strongly	82	92	59
Don't know/No answer	1	1	7
Number of respondents	(104)	(102)	(1,004)

TABLE 4.7B:

Please tell me if you agree strongly, agree somewhat, disagree somewhat, or disagree strongly with the following as a possible solution to prison overcrowding: Restrict the powers of the courts to impose imprisonment.

	Federal Supervisors & Officers %	State Supervisors & Officers %	Federal Board Members %	State Board Members %
Agree strongly	0	4	0	2
Agree somewhat	11	8	20	6
Disagree somewhat	7	24	0	25
Disagree strongly	83	63	80	63
Don't know/No answer	0	2	0	4
Number of respondents	(46)	(102)	(5)	(52)

TABLE 4.8A:

Please tell me if you agree strongly, agree somewhat, disagree somewhat, or disagree strongly with the following as a possible solution to prison overcrowding: Restrict the powers of the courts to impose imprisonment.

	Lawyers %	Judges %	General Public %
Agree strongly	6	9	23
Agree somewhat	11	12	23
Disagree somewhat	17	20	11
Disagree strongly	63	54	32
Don't know/No answer	3	6	11
Number of respondents	(104)	(102)	(1,004)

TABLE 4.8B:

Please tell me if you agree strongly, agree somewhat, disagree somewhat, or disagree strongly with the following as a possible solution to prison overcrowding: Base sentencing policies on current prison population and revise them in response to prison congestion.

	Federal Supervisors & Officers %	State Supervisors & Officers %	Federal Board Members %	State Board Members %
Agree strongly	11	8	0	4
Agree somewhat	22	29	40	27
Disagree somewhat	15	18	0	25
Disagree strongly	46	42	60	38
Don't know/No answer	7	3	0	6
Number of respondents	(46)	(102)	(5)	(52)

TABLE 4.9A:

Please tell me if you agree strongly, agree somewhat, disagree somewhat, or disagree strongly with the following as a possible solution to prison overcrowding: Shorten the time served for those in prison.

	Lawyers %	Judges %	General Public %
Agree strongly	1	6	7
Agree somewhat	19	24	15
Disagree somewhat	26	18	15
Disagree strongly	53	49	57
Don't know/No answer	1	4	6
Number of respondents	(104)	(102)	(1,004)

TABLE 4.9B:

Please tell me if you agree strongly, agree somewhat, disagree somewhat, or disagree strongly with the following as a possible solution to prison overcrowding: Shorten the time served for those in prison.

	Federal Supervisors & Officers %	State Supervisors & Officers %	Federal Board Members %	State Board Members %
Agree strongly	7	5	0	2
Agree somewhat	22	28	40	23
Disagree somewhat	41	29	20	33
Disagree strongly	30	32	40	27
Don't know/No answer	0	5	0	15
Number of respondents	(46)	(102)	(5)	(52)

Prison Conditions

Most Americans are not aware of the costs involved in building new prisons or in maintaining offenders in prison. Costs vary from state to state, but official estimates run anywhere from

$25,000 to $125,000 per cell to build. The average cost for maintaining an inmate for one year in a state prison is between $15,000 and $20,000, more than it costs to send a student through college.[12] Reports by state departments of corrections indicate that the daily cost of maintaining a single inmate in an already built prison cell ranges from $11.83 per day in Texas to $58.72 in Massachusetts.[13]

Only one in five (19%) Americans are aware of the high cost of incarcerating offenders. In fact, nearly half (46%) of the public underestimate the cost, while nearly a quarter (20%) overestimate it (Table 4.10).

TABLE 4.10:

The cost to maintain a prisoner in a state prison per year is:

	General Public %
$200 to $300	5
$500 to $700	15
$10,000 to $12,000	26
$15,000 to $20,000	19
$20,000 or more	20
Don't know/No answer	15
Number of respondents	(1,004)

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[12] Bruce Cory and Steve Gettinger, Time to Build? The Realities of Prison Construction, New York: The Edna McConnell Clark Foundation, 1984, p. 15.

[13] Ibid, p. 17.

Another important finding is that although many Americans indicate support for a "get tough" policy toward violent criminals, a large majority also believe that inmates should be provided with decent conditions in prison and 93% believe they should have access to vocational training and educational programs. This finding again reveals that the public is sympathetic to the rehabilitation of offenders (Tables 4.11 and 4.12).

TABLE 4.11:

Do you think that inmates have a right to decent living conditions in prison?

	General Public %
Yes	77
No	19
Don't know/No answer	4
Number of respondents	(1,004)

TABLE 4.12:

Do you think that inmates should have access to vocational training and educational programs in prison?

	General Public %
Yes	93
No	6
Don't know/No answer	1
Number of respondents	(1,004)

Support for Rehabilitation

This support for rehabilitation is not mere lip service. A considerable number of Americans also are willing to help pay for rehabilitation. Half of the public (50%) claim they would agree to a five-year increase of 1% in state income taxes to pay for additional prisons and the enhancement of prison conditions and opportunities. Forty-four percent (44%) say they would not. Income level is not a determining factor. Those earning less than $10,000 are as likely to agree to a tax increase for this purpose as those earning $40,000 or more.

Younger people, however, especially those under 35 years of age, are more inclined to support a raise in taxes than are older people (Tables 4.13A, 4.13B, and 4.13C).

TABLE 4.13A:

Current cost estimates indicate that the minimum cost to maintain a prisoner in a state prison is $15,000 per year. Would you agree to a five-year increase of 1% in state income taxes to pay for additional prisons and the enhancement of prison conditions and opportunities?

	General Public %
Yes	50
No	44
Don't know/No answer	6
Number of respondents	(1,004)

TABLE 4.13B:

Would you agree to a five-year increase of 1% in state income taxes to pay for additional prisons and the enhancement of prison conditions and opportunities?

	BY INCOME					
	Less than $10,000 %	$10,001 to $15,000 %	$15,001 to $20,000 %	$20,001 to $30,000 %	$30,001 to $40,000 %	$40,001 or More %
Yes	52	51	57	50	51	55
No	41	43	38	46	44	42
Don't know/No answer	7	5	5	5	5	3
Number of respondents	(1,004)					

TABLE 4.13C:

Would you agree to a five-year increase of 1% in state income taxes to pay for additional prisons and the enhancement of prison conditions and opportunities?

	BY AGE				
	18-24 %	25-34 %	35-49 %	50-64 %	65 and Over %
Yes	62	55	44	46	45
No	36	42	48	47	48
Don't know/No answer	6	3	7	7	7
Number of respondents	(168)	(233)	(228)	(201)	(166)

CHAPTER FIVE

According to some experts, community corrections for select nonviolent offenders may play a prominent role in the future of the criminal justice system. Survey findings discussed in this chapter reveal broad support for alternatives to punishment in prison for certain offenders. Probation scores high as a means of alternate punishment for first offenders. Other programs such as community service, restitution, halfway houses, and work-release facilities also receive support from judges, lawyers, and the general public. The need to educate the public about the role of community service is explored and several exemplary corrections programs are described. All the surveyed groups, however, agree that advocating alternatives to prison does not mean allowing serious criminals to qualify for such programs.

CHAPTER FIVE: ALTERNATIVES TO INCARCERATION

> "Building more prisons is not the key.
> Changing attitudes toward rehabilitation is."
> —-Prosecutor

I. The Growing Need for Alternative Programs

As discussed in the previous chapter, the problem of prison overcrowding is reaching crisis proportions. The need for inexpensive and flexible community supervision alternatives has never been more important. Increasingly, judges are turning to alternatives to punishment in prison.[1]

The incentive to explore community punishment alternatives is primarily economic. According to the U.S. Department of Justice, incarceration is the most expensive sanction of the criminal justice system. Proponents of alternatives to prison believe that by using more of such programs, states could save money and reduce the prison population to a manageable level without raising the crime rate.[2] For instance, a recent study of the Indiana corrections system found that 20% of the prison population could be considered for alternative programs.[3]

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[1] M. Kay Harris, Reducing Prison Overcrowding: An Overview of the Options, Washington, D.C.: National Institute of Corrections, 1982.

[2] Krajick and Gettinger, Overcrowded Time, p. 25.

[3] Mark Umbreit, Reducing Prison Overcrowding Through Community Corrections, Michigan City, IN: Prisoners and Community Together, 1981, p. 3.

The use of such programs for those 20% would result in a savings of more than $18 million. Moreover, it would cost $1.7 million to provide alternative programs, as compared to the $20 million it currently costs to keep those inmates imprisoned.[4] Studies in other states suggest that a similarly high proportion of nonviolent convicts could be considered good candidates for community corrections.

A variety of alternatives to prison programs currently are in use, including: intensive probation; restitution, where the offender repays the victim; community service, where the offender works for charitable or governmental agencies for no pay; and work-release programs, which permit a prisoner to leave his institution to work for pay in the community but require him to return for his leisure and sleeping hours. Other offenders on work release live in halfway houses in the community.

Under all these programs, offenders are monitored in the community. There is no evidence to support the concern that increased use of community programs would lead to an increase in the crime rate. A 1982 study of the Minnesota community corrections system found that more than 80% of all felony offenders were under community supervision without imposing a risk to public safety.[5] Other research has indicated that the crime rate for community programs is small, ranging from 1% to 8%, and most of those are petty crimes.[6]

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[4] Krajick and Gettinger, Overcrowded Time, p. 26.

[5] Ibid.

Recent Increase in Probation Sentences

Probation is the most common alternative-to-prison sentence currently used by judges. Nearly three-quarters (72%) of all adult offenders under correctional supervision in the United States are supervised in the community through probation and parole agencies, while only 28% are incarcerated in prison. Since 1979, the probation population has increased by more than 38%, while the parole population has increased by only 15%. According to the latest statistics from the U.S. Department of Justice, the adult probation population rose in 1983 by nearly 145,000 persons to 1,502,247, a 10.7% increase over the previous year.[7]

Other Benefits of Alternative Programs

In addition to the financial savings, alternative programs provide other benefits to the community such as free community-service work, direct restitution payment to crime victims, and a reduction in welfare costs for dependents of offenders. Moreover, advocates of community corrections believe that alternative programs offer substantial benefits by preventing the emotional and psychological damage caused to both offenders and their families by the prison experience. Some correctional experts describe prisons as the "worst possible setting" for rehabilitation efforts.[8]

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[6] Cory, Time To Build?, 1984, p. 44.

[7] "Probation and Parole 1983," p. 1.

Another critical principle in alternative programs is the need to prevent future crimes by the offender. Community service is an approach to sentencing that addresses the needs of both the offender and the community in a direct and comprehensive way.[9]

Often, alternative programs include individualized plans to suit the specific needs of the offender. Those who would be most likely to return to prison require extra supervision. Probation programs can incorporate a combination of restitution, community service, vocational training, and medical or psychological treatment, along with intensive probation supervision or residence in a halfway house.

The Need to Educate

Community service experts believe that sentencing alternatives require a program of education and training for judicial authorities. They believe that this kind of program must be part of an overall plan to reduce prison populations. For this purpose, the National Institute for Sentencing Alternatives (NISA) was established in 1980. Designed as an educational center to explore sentencing and prison overcrowding issues, NISA organizes training programs for judges, prosecutors, legislators, and probation and corrections leaders. It also has assisted in the establishment and planning for restitution and community service programs around the country.

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[8] Krajick and Gettinger, Overcrowded Time, p. 18.

[9] Vincent O'Leary and Todd R. Clear, Directions for Community Corrections in the 1990s, Washington, D.C.: U.S. Department of Justice, 1984.

Exemplary Community Programs

Community corrections programs vary from community to community. One program that has attracted a high level of interest is the Victim Offender Reconciliation Program (VORP), launched in Indiana six years ago. Currently there are more than thirty VORP programs in communities across the country, including several new developments in Canada and England. The program involves a face-to-face meeting between the victim and offender in the presence of a trained mediator. The program is used mostly for property offenses. A restitution contract is drawn up and signed and VORP remains in contact with the victim until fulfillment of the contract is verified.

In 1979, the Vera Institute of Justice initiated a project in New York City that permits offenders to remain in the community to clean and refurbish senior citizens' centers. Careful screening and monitoring are essential components of the project. Vera also refers the offenders to social service agencies which provide employment training, educational services, and economic assistance. Nearly 90% of the offenders who have participated in the program have successfully completed their sentences.[10]

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[10] Community Service Sentencing Project Quarterly Statistical Report, Washington, D.C.: Vera Institute of Justice, 1981.

II. Survey Findings Indicate Broad Support

The findings in The Figgie Report Part V reveal broad support among the public and professionals for alternatives to prison. The public, although less supportive than the experts, still show majority support for alternatives. Better than half of the Americans surveyed favor programs that offer offenders alternatives to the prison experience. Six out of ten (62%) members of the general public support community service and an equivalent number (60%) support restitution. Half (53%) support work-release programs and half (52%) support halfway houses. Less than half (44%) support intensive probation.

The findings also verify that a high percentage of judges now are using alternative-to-prison sentences. As discussed in Chapter Three, nearly half of the judges surveyed (46%) report that more than half of the sentences they reached in a year were probation or other alternatives. From a list of five alternative programs, judges express the most support for work-release programs. In fact, nine out of ten judges (90%) say they support this alternative to imprisonment for certain offenders. A nearly equal number (87%) support restitution and 86% support intensive probation. Eighty-four percent (84%) support community service and 81% support halfway houses.

Moreover, lawyers are even more supportive of these alternatives. Nearly all of the lawyers (95%) interviewed support both work-release programs and halfway houses. Ninety-three percent (93%) support community service and 92% support restitution. Ninety percent (90%) support intensive probation (Table 5.1A).

TABLE 5.1A:

Do you support any of the following alternatives to imprisonment for certain offenders?

	Lawyers %	Judges %	General Public %
Work-release programs	95	90	53
Restitution	92	87	60
Community service	93	84	62
Intensive probation	90	86	44
Halfway houses	95	81	52
Other	3	3	0
Don't know/No answer	1	0	11
Number of respondents	(104)	(102)	(1,004)

Appropriately, parole board members and parole officers and supervisors almost unanimously support these alternatives to punishment in prison. All of the federal parole board members interviewed support the above alternatives, and approximately 90% of the state board members do so also An almost equally high percentage of both state and federal parole officers and supervisors support these alternatives to prison (Table 5.1B).

TABLE 5.1B:

Do you support any of the following alternatives to imprisonment for certain offenders?

	Federal Supervisors & Officers %	State Supervisors & Officers %	Federal Board Members %	State Board Members %
Halfway houses	93	99	100	92
Work-release programs	89	96	100	94
Restitution	91	97	100	88
Community service	89	94	100	94
Intensive probation	85	89	100	92
Other	13	9	40	15
Don't know/No answer	2	0	0	0
Number of respondents	(46)	(102)	(5)	(52)

Probation for First Offenders

Consistent with their support of alternative programs, lawyers and judges strongly support the policy of using probation for certain first offenders. All of the lawyers (100%) agree with this practice and 84% say they strongly agree with it. Ninety-three percent (93%) of the judges agree and three-quarters (75%) say they strongly agree. A smaller percentage of the public (76%), although still a large majority, agree, with 40% agreeing strongly (Table 5.2).

TABLE 5.2:

Please tell me if you agree strongly, agree somewhat, disagree somewhat, or disagree strongly with the following statement: Judges should use probation for certain offenders as an alternative to prison.

	Lawyers %	Judges %	General Public %
Agree strongly	84	75	40
Agree somewhat	16	17	36
Disagree somewhat	0	3	8
Disagree strongly	0	0	9
Don't know/No answer	0	5	6
Number of respondents	(104)	(102)	(1,004)

Probation for Female Offenders

There is less agreement about whether or not judges should use probation for women offenders as an alternative to prison. More members of the general public support this idea than lawyers or judges. Forty-six percent (46%) of the public agree with using probation for women offenders, while 47% disagree. Forty-two percent (42%) of judges agree and 48% disagree. Only one-third (36%) of the lawyers agree with this concept, while 54% disagree. Interestingly, gender does not affect a person's response to this question (Tables 5.3A and 5.3B).

TABLE 5.3A:

Please tell me if you agree strongly, agree somewhat, disagree somewhat, or disagree strongly with the following statement: Judges should use probation for women offenders as an alternative to prison.

	Lawyers %	Judges %	General Public %
Agree strongly	18	26	21
Agree somewhat	18	16	25
Disagree somewhat	16	20	20
Disagree strongly	38	28	27
Don't know/No answer	10	10	7
Number of respondents	(104)	(102)	(1,004)

TABLE 5.3B:

Please tell me if you agree strongly, agree somewhat, disagree somewhat, or disagree strongly with the following statement: Judges should use probation for women offenders as an alternative to prison.

	All Respondents %	Male %	Female %
Agree strongly	21	23	19
Agree somewhat	25	24	25
Disagree somewhat	20	20	20
Disagree strongly	27	27	27
Don't know/No answer	7	6	8
Number of respondents	(1,004)	(489)	(516)

Probation for White-Collar Criminals

Judges are the most likely of the three groups to believe they should use probation for white-collar criminals as an alternative to prison. Forty-three percent (43%) of judges agree with using probation for white-collar criminals, compared to 37% of lawyers and 34% of the general public. Nearly half (45%) of the public strongly disagree with this concept (Table 5.4).

TABLE 5.4:

Please tell me if you agree strongly, agree somewhat, disagree somewhat, or disagree strongly with the following statement: Judges should use probation for women offenders as an alternative to prison.

	Lawyers %	Judges %	General Public %
Agree strongly	13	22	13
Agree somewhat	24	21	21
Disagree somewhat	16	18	14
Disagree strongly	39	30	45
Don't know/No answer	7	10	7
Number of respondents	(104)	(102)	(1,004)

Emphasis on Prison Terms for Serious Offenders

Although support for programs like restitution, community service, halfway houses, work-release, and intensive probation is strong among all the groups, the public and the professionals alike tend to place a higher priority on meting out appropriate punishments in prison for more serious offenders. A distinction is made by both groups between those who should be punished and rehabilitated through alternative programs and those who should be punished and rehabilitated in prison. The fact that the most popular solution to prison overcrowding is the building of more prisons underscores the respondents' belief that certain offenders be punished only by serving an appropriate term in prison.

Support for these alternative programs must be viewed in the context of the general dissatisfaction Americans express with the entire criminal justice system. Most Americans recognize that prisons are critically overcrowded and that solutions must be found to ease this serious condition. In response to this, both the professionals and the general public express support for building more prisons to house serious offenders. Along with this support, they also agree with diverting less serious offenders into alternative programs, allowing certain offenders to qualify for early parole release, and giving probation to certain first offenders.

Furthermore, most Americans advocate that prisoners should be given the opportunity to be rehabilitated. A strong majority believe it is important to provide decent living conditions and vocational training for offenders in prison. Finally, many Americans are willing to help finance programs that would improve the quality of life for prisoners.

CONCLUSION

As the findings of The Figgie Report Part V illustrate, the public and the professionals are keenly aware of the complex interconnection between the parole system and other critical components of the criminal justice system. Taken as a whole, parole release, parole supervision, sentencing decisions, prison overcrowding, and alternatives to incarceration point out the magnitude of the challenge facing criminal justice experts as they attempt to apportion justice that is punitive, equitable, corrective, and protective of both the rights of offenders and those of law-abiding citizens.

In the past decade, a number of changes in the system have taken place and others are being considered. Twelve states have abolished parole release and four have also abolished parole supervision. Recent legislation has abolished federal parole release. Other states are considering bills that would limit both judicial and parole release discretion.

However, the complex relationship of factors revealed in this report underscores the difficulties that exist in developing an across-the-board national policy concerning parole release. For instance, a strong majority of the public and the professionals alike believe that if parole release were abolished, prisons would become even more crowded. But all the groups surveyed agree that parole release needs to be reorganized. Furthermore, the public does not believe that judges are tough enough on criminals. At the same time, they recognize that not every offender should serve a prison sentence.

How then and by whom should decisions be made concerning prison sentences; how long is long enough; who should determine when the offender is "ready" to be released; and what role, if any, should parole boards have? What significance should criminal justice experts, politicians, and legislators give to the disparity that exists between how the public feels about the parole system and how judges and lawyers imagine the public feels?

Judges and lawyers believe that Americans are so frustrated with parole release practice that they want the process eliminated altogether. Yet, this report reveals that most Americans want the system reorganized, not abolished. For, like the professionals, they believe that the parole agency serves an important role in equalizing sentences. Is the public being heard?

This report has not attempted to answer these and other questions, but rather to raise them. The hope is that research directed at increasing awareness of the parole system and related issues can help promote constructive discussions designed to improve the criminal justice system.

General Observations and Recommendations

In summing up the large number of findings discussed in this report, several observations expressed by the public, lawyers, judges, and parole officials seem to speak for the report in its entirety and to, perhaps, describe the direction of the changes that need to be considered.

1. Create uniform standards for parole eligibility.
2. Examine closely both judicial and parole release discretion.
3. Impose tough prison sentences on serious criminals.
4. Build more prisons and improve conditions in existing ones.
5. Provide in-prison vocational training for inmates and fund job-training programs for parolees and probationers so that "crime does not pay."
6. Divert more offenders of less serious crimes into community programs and other alternatives to punishment in prison.
7. Provide more and better trained staff to supervise parolees and probationers.
8. Educate the media and the public about how the parole system works.
9. Be more attentive to victims' rights and restitution.
10. Create opportunities for discussions of the parole system among key players.

Several comments made by the lawyers, judges, and parole officials interviewed seem particularly pertinent to many of these general observations.

> "The whole parole system has to be reorganized. I'd like to see more communications and cooperation among the different people involved with the parole process. Certainly, that's where to begin."
>
> —State Parole Board Member

> "Standards for parole eligibility have to be set uniformly and more objectively. Prisoners need to serve a minimum amount of time before being paroled, a period of time that is punitive but reasonable. Once parole release dates have been set, prisoners should be segregated as to the time of their release and the seriousness of the crime."
>
> —Criminal Court Judge

> "Parole offices are understaffed. Hire more parole agents and pay them well so you attract a more highly trained person. Then fund the agencies in such a way that they can do the job right--namely, help the offender and protect the community."
>
> ---Defense Attorney

> "The media's misunderstanding of how parole works and the misinformation it spreads--particularly about celebrated cases--damages the system's credibility with the public."
>
> ---Federal Parole Board Member

> "Enhance public understanding of the parole system by inviting citizens, media, and politicians to see how the system works."
>
> ---State Parole Board Member

The Economics of Crime

Another area of concern for the professionals surveyed is the economics of crime, the subject of the sixth Figgie Report. Ex-convicts, parolees, and probationers have an almost impossible time finding jobs because they lack job training and often lack maturity and motivation. The evidence is clear: those who don't work are most likely to commit crimes. Those who have already committed crimes can't get jobs.

The notion that "crime pays" has to be divested of its allure so that offenders are encouraged to rehabilitate themselves. Otherwise, taxpayers will continue to pay for the high cost of crime. To deter offenders from committing more crime, this report strongly urges that more in-prison and community rehabilitation programs be established, sufficiently staffed, and funded. One parole board member offered an unusual method of soliciting support for such programs:

"Tell big business that crime and parole cost fiscally and emotionally. Retail stores, for instance, raise prices because of shoplifting. Once this message is communicated, set up programs to give educational and vocational training to parolees."

---State Parole Board Member

METHODOLOGY

A multi-stage research design was used in conducting this study of attitudes towards the parole system and related criminal justice issues. The first phase consisted of qualitative and background research used to develop the five questionnaires for the different audiences surveyed. In the second phase, surveys were conducted among the five populations: the general public, judges, lawyers, parole board members, and parole officers and supervisors. The third phase was devoted to data analysis.

PHASE I: QUALITATIVE AND BACKGROUND RESEARCH

Phase I consisted of a review of past and current research on parole practices as well as public and professional attitudes about parole release and supervision.

Advisory Panel

To provide input and guidance to the study, a panel was formed of experts on parole and related issues. This group was consulted during all phases of the study. The advisory panel was particularly helpful in the questionnaire construction phase, and in ensuring that the questionnaire and final report are both comprehensive and non-biased. The completed report reflects contributions from all advisors. A list of the members of the panel can be found at the front of the report.

Timetable

The timetable for the various phases of this study was organized as follows:

1. Background research	April - May, 1984
2. Construction of questionnaires, pretesting, and final refinement of questionnaires	June - August, 1984
3. Fielding of questionnaires	September - November, 1984
4. Data analysis and report writing	December, 1984 - April, 1985

PHASE II: DATA COLLECTION FOR QUANTITATIVE SURVEYS

General Public

There were two separate interviewing sessions with two samples of the general public. For three weeks in September, twenty-five trained interviewers conducted phone interviews asking the public a twenty-minute-long questionnaire, which constituted the main series of questions analyzed in this study. Then, for three weeks in November, twenty-five interviewers queried a second sample of Americans, this time asking them a supplemental group of only three questions relating to the amount of time prisoners spend in prison.

All these interviews were conducted on weekdays and on weekends, between the hours of 10:00 a.m. and 11:00 p.m. Briefings were held before each daily interviewing session to discuss the data collection process. Interviewers were urged to ask questions at any time throughout the interviewing period. Supervisors audited each interviewer periodically in order to ensure accuracy and to prevent bias.

The sample used was a national random digit sample of the telephones of the United States constructed for Research & Forecasts by Survey Sampling, Westport, Connecticut. Random digit dialing is the most widely used sampling technique in the United States. This method provides an efficient, statistically valid way of obtaining representative samples of the general public at a reasonable price.

In order to ensure that the respondents represented a random sample of United States residents, every effort was made to reach and complete an interview with a qualified respondent at each number. Interviewers made one initial call and at least three callbacks to each telephone number that had neither yielded a completed interview nor been disqualified.

Overall, interviewers achieved a sample response rate of 54%, comparable to the rates reported by other professionals in the field of survey research. A complete breakdown of the response rate follows:

General Public Response Rate[*]

Completed Interviews	1004	(54%)
Nonresponse[1]	849	(46%)
Refusals	653	
Terminated interviews	62	
Callbacks	88	
Deaf/Language problems	46	
Total Potential Respondents	1853	(100%)
Excluded from Sample[2]	1102	
Disconnected	535	
Never answered	368	
Always busy	51	
Business/Government	114	
Not qualified[3]	34	
Total Number of Calls	2955	

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[1] "No answers," busy signals, or callbacks are classified as nonresponse if the phone was answered at some point but the interview was never completed.

[2] Lines that remained unanswered or busy for four consecutive attempts were assumed to be nonresidential numbers (phone booths, problem lines, businesses closed for the evening, etc.) and were excluded from response rate calculations.

[3] Those who could not be interviewed because they were too young, etc., were classified as "Not qualified."

[*] The computation of response rates for this study conforms to guidelines set by the Council of American Survey Research Organizations.

Lawyers and Judges

A separate questionnaire was administered to 104 criminal lawyers--52 of whom are defense attorneys and 52 who are prosecutors. The same questionnaire was used to interview 102 criminal judges, but was supplemented by one additional question regarding what factors influence judges' sentencing decisions. The interviews took place on weekdays, from October to November, 1984, between 9:00 a.m. and 5:00 p.m.

Response Rate for Lawyers

Completed Interviews	104	(48%)
Nonresponse	113	(52%)
Refusals	18	
Terminated	0	
Callbacks	95	
Deaf/Language problems	0	
Total Potential Respondents	217	(100%)
Excluded from Sample	281	
Disconnected	4	
Never answered	17	
Always busy	5	
Business/Government number	0	
Not qualified[1]	255	
Tota Number of Calls	498	

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[1] Those who were not criminal court lawyers were classified as "Not qualified."

Response Rate for Judges

Completed Interviews	102	(34%)
Nonresponse	200	(66%)
Refusals	23	
Terminated	1	
Callbacks	176	
Deaf/Language problems	0	
Total Potential Respondents	302	(100%)
Excluded from Sample	406	
Disconnected	12	
Never answered	515	
Always busy	85	
Business/Government number	0	
Not qualified[1]	78	
Total Number of Calls	708	

Parole Board Members

Another questionnaire was administered to 57 parole board members--52 of whom work for the state and the remaining five within the federal system. This questionnaire repeated several of the questions judges and lawyers were asked, but added many others relating specifically to the function of parole board members.

This sample was developed from a list found in the ACA Directory 1984, published by the American Correctional Association. The directory lists telephone numbers for all adult state parole board offices and all five regional offices of the U.S. Parole Commission. An attempt was made to complete an interview with one board member for every state that still has an operative board. Calls were placed to every state parole board office listed and to all the federal offices.

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[1] Those who were not criminal court judges were classified as "Not qualified."

After explaining the intent of the survey, the interviewer asked to speak with a parole board member. If a parole board member could not be found at that number, the interviewer asked for a telephone number where a board member from that state or federal regional office could be reached. All respondents were guaranteed anonymity.

Most states were willing to participate. However, in order to obtain the desired 50 state interviews, in a few states, two board members were interviewed. The five interviews with federal board members represent completions with four out of the five regional offices, and one from the U.S. Parole Commission office.

Response Rate for Parole Board Members

Completed Interviews	57	(68%)
Nonresponse	27	(32%)
Refusals	1	
Terminated	0	
Callbacks	26	
Deaf/Language problems	0	
Total Potential Respondents	84	(100%)
Excluded from Sample	10	
Disconnected	1	
Never answered	8	
Always busy	1	
Business/Government number	0	
Not qualified	0	
Total Number of Calls	94	

State Parole Officers and Supervisors

State parole officers and supervisors were administered a variation on the questionnaire used for parole board members, including questions particular to the nature of the job of supervision. The sample for the state officers and supervisors was also developed from the ACA Directory 1984.

For every state, interviewers called two of the state's parole/probation district offices and asked to speak with a parole officer or supervisor. Working in this way, 102 interviews were completed with state parole officers and supervisors, two from nearly every state.

Response Rate for State Parole Officers/Supervisors

Completed Interviews	102	(70%)
Nonresponse	44	(30%)
Refusals	1	
Terminated	0	
Callbacks	43	
Deaf/Language problems	0	
Total Potential Respondents	146	(100%)
Excluded from Sample	19	
Disconnected	3	
Never answered	8	
Always busy	6	
Business/Government number	0	
Not qualified[1]	2	
Total Number of Calls	165	

Federal Parole Officers/Supervisors

For the sample of federal parole officers and supervisors, a list was developed from the ACA's 1981 Probation and Parole Directory, which contains telephone numbers of the federal parole and probation offices in every state. Forty-six completions were obtained with federal parole agents. Their questionnaire was identical to the one used for interviewing state officers.

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[1] Those who were not state parole officers or supervisors were classified as "Not qualified."

Response Rate for Federal Parole Officers/Supervisors

Completed Interviews	46	(64%)
Nonresponse	26	(36%)
Refusals	1	
Terminated	0	
Callbacks	25	
Deaf/Language problems	0	
Total Potential Respondents	72	(100%)
Excluded from Sample	18	
Disconnected	5	
Never answered	6	
Always busy	4	
Business/Government number	0	
Not qualified[1]	3	
Total Number of Calls	90	

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[1] Those who were not federal officers or supervisors were classified as "Not qualified."

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APPENDIX[*]

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U.S. Department of Justice
Bureau of Justice Statistics

Bureau of Justice Statistics
Special Report

Time Served in Prison

By Herbert Koppel
Statistician, BJS

June 1984

In the United States, imprisonment is the most frequently used sanction for those convicted of serious, violent crimes or those with long and grievous records of prior arrest and conviction. Whatever the aim of imprisonment, whether rehabilitation, incapacitation, deterrence or retribution, a key aspect of its use is its duration. Yet little is known about the time actually served in prison as opposed to the length of sentence given upon conviction. This Special Report is an initial attempt to provide accurate and systematic information on the time served in prison for various offenses in a number of States.

Except where indicated by numbered references, the numerical values in the tables and throughout this report were derived from information provided by criminal justice Statistical Analysis Centers in the States. Such centers have been established with support from the Bureau of Justice Statistics in 40 States, the District of Columbia, Puerto Rico, and the Virgin Islands. In addition to providing data to BJS, their functions are the gathering, analysis, and dissemination of statistical information pertaining to crime and criminal justice in their States for the benefit of policy-makers, criminal justice practitioners, and the public.

Many factors affect both the duration of imprisonment and how it is reported. Because of this, care must be exercised in interpreting the numbers in the tables. In particular, extreme caution is necessary in any attempt to make State-by-State comparisons.

Steven R. Schlesinger
Director

In the United States, the criminal justice system is complex and diverse. Each State has a different set of laws and policies for trying and sentencing offenders and for determining the type and duration of punishment. Yet all of these different processes have the same ultimate aim: the meting out of justice to criminals.

Many convicted persons are released into the community on probation with some degree of imposed supervision and restrictive conditions.[1] For those who are punished more severely for serious crimes, imprisonment is by far the most frequently used sanction in this country, as well as in most other nations with similar cultures. Fines, restitution, or community service often are used as punishment for minor infractions and certain nonviolent crimes; the death penalty is exacted only rarely for the most heinous offenses.

Incarceration has not always been the "standard" mode of punishment for serious offenders, nor is its use universal in the world today. Examples of other types of punishment include the use of the death penalty for a wide variety of offenses (England until the 19th century; nations like Iran and China today), the stocks and the pillory (in colonial America), branding or other marking of the criminal (Hester Prynne's scarlet letter), maiming and amputation (Saudi Arabia), banishment or deportation (colonial Australia; the French penal colony on Devil's Island), and the whipping post (used in one State of the U.S. as recently as 1952).

The aims of imprisonment are much debated. Is its purpose to rehabilitate the offender? To deter others from crime? To "incapacitate" the offender—that is, to keep him from committing other crimes during the period of imprisonment? To exact retribution? There is no universally accepted answer. However, regardless of what imprisonment is intended to accomplish, an important characteristic is its duration.

Little has been published about the amount of time that convicted persons actually serve in prison. Information in the news media can be confusing or misleading. A newspaper may report that a person was convicted of several serious charges and received an aggregate sentence of several hundred years. Then, perhaps on the same page, one may learn of a man who, although he is only 25 years old, already has served five or six separate prison terms. This report is intended to provide a realistic picture of the time actually served in prison and an overview of some of the factors that affect it.

Average duration of imprisonment

Tables 1 and 2 show the average time spent in prison for various categories of offenses in 12 States. These tables indicate that the average prison stay is on the order of 1.5 to 2.5 years for all persons imprisoned as the result of felony convictions; for those who were convicted of serious violent crimes it is about 2.5 to 4 years. As would be expected, the longest periods of imprisonment are for criminal homicide and rape.

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[1] Report to the Nation on Crime and Justice, U.S. Department of Justice, Bureau of Justice Statistics, NCJ-87068, October 1983, pages 74-75.

In the next section, some of the considerations that affect interpretation and comparability will be noted, and the data will be analyzed and discussed.

INTERPRETATION AND COMPARABILITY OF DATA

An important caveat in interpreting these findings is that the data cover different years (table 1). Differences in State laws and practices are discussed below.

Judicial and parole discretion

What follows is only a brief qualitative description of the discretionary options that affect the time served in prison. A recent bulletin by the Bureau of Justice Statistics (Setting Prison Terms, NCJ-76218, August 1983) presents a more detailed and comprehensive discussion.

In States with indeterminate sentencing, the judge has broad discretion in selecting a sentence from within a rather wide range of terms for each crime. In about a dozen States, however, the judge's discretion is limited by determinate sentencing laws which narrow the range of possible sentence lengths. For example, the judge may be required to impose a sentence that is at least two-thirds of the maximum prescribed by statute.

In a more fundamental respect, the judge usually has a very high degree of discretion in deciding whether or not to send the offender to prison at all. The judge can impose a sentence of probation or, in some cases, select an alternative to incarceration, such as requiring the convicted person to perform community service. This discretionary power, however, is far from absolute, since nearly all States have enacted laws that make a prison sentence mandatory under certain circumstances. Examples of such circumstances include use of a firearm in committing a felony, violations of certain drug laws, and a history of prior convictions for violent crimes.

Once a prison term has begun, the parole board's discretionary power is a major determinant of its actual length. In some States, the parole board's discretion is nearly unlimited; they can release a prisoner almost immediately after he is admitted. At the other extreme, parole board discretion has been abolished completely in several States; a prisoner must serve his entire sentence (less any "good time" that he has earned). A majority of the States give their parole boards discretionary powers that fall somewhere between these limits.

Nearly all of the States have provisions that enable a prisoner to reduce the length of his stay by good behavior and, in some cases, by specific acts such as donating blood or participating in certain programs. The scope of these good-time provisions varies considerably among the States, particularly in the amount of sentence reduction that can be achieved through a given period of good behavior.

Because of the recent overcrowding of prisons, a number of States have instituted provisions for the early release of certain nonviolent prisoners.

During the past few years, many States have made sweeping changes in the laws affecting sentence lengths, judicial discretion, parole policies, and other provisions for the release of prisoners. As a result, the amounts of time served in prison are likely to change quite appreciably in the near future. This has not had a significant effect on the data used in this report, however, because these data pertain to persons who already have been released, and so had been sentenced and served their time in prison before new legislation became effective.

Credit for jail time

Some persons are detained in jail while awaiting trial; others are let out on bail or through other means of pretrial release such as ROR (release on own recognizance). If the trial results in the imposition of a prison sentence, any time spent in jail prior to sentencing usually is credited toward the serving of the sentence. In some cases in the tables, where noted, the values of average time served include credited jail time. In the other cases, however, only the time spent in prison after sentencing is shown.

The difference can be quite significant. Pretrial detention in jail generally lasts several months; in many cases, it is an appreciable fraction of the total time served. The credited jail time will tend to be longer for the more serious offenses. The person accused of a serious crime is less likely to be released while awaiting trial. Even if bail is set, it is likely to be so large a sum that some time is spent in jail while waiting for bail to be posted. The more serious charges also are more likely to result in time-consuming courtroom trials rather than guilty pleas, and the total time between arrest and sentencing is likely to be longest for very serious charges because of complexities in preparing for and conducting the trials.

A study in Pennsylvania[2] found that the average time spent in jail while awaiting trial was 3.0 months for those charged with serious violent crimes, 2.4 months for serious property crimes, and 2.2 months for lesser offenses. The relationship between pretrial jail time and the seriousness of the offense is shown even more dramatically by the following average amounts of credited jail time for those who were released from prison in Illinois[3] from 1978 through 1982:

Offense	Average credited jail time
Murder	20.1 mos.
Attempted murder and voluntary manslaughter	10.9
Rape	9.0
Robbery	7.6
Aggravated assault	5.7
Burglary	4.8
Larceny	4.0

The leniency/strictness paradox

It is important to realize that time served in prison is influenced by the composition of prison populations in terms of types of offenses and the length and seriousness of prior criminal histories. If the average time served is longer in one locality than another, this does not necessarily indicate that the first is stricter or tougher in dealing with criminals. Indeed, the reverse may be true.

If we consider two hypothetical jurisdictions, one strict and the other lenient, we can assume that the strict one will imprison a larger percentage of those who are convicted. This will include many whose crimes were of lesser severity and whose prior criminal records are minor or nonexistent. Such persons will receive relatively short sentences. Furthermore, they will tend to obtain early release from prison because the nature of their offenses and their personal characteristics will lead to favorable actions by the parole board and the accumulation of good-time credit.

In the lenient jurisdiction, on the other hand, many criminals whose offenses were less serious and whose prior records are not extensive will not go to prison at all; instead, they will receive probation or suspended sentences.

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[2] Edelman, Craig C., An Exploratory Study of Detentioners in Pennsylvania County Prisons, Criminal Justice Statistics Division, Bureau of Planning, Pennsylvania Commission on Crime and Delinquency, 1983.

[3] See footnote d, table 1.

However, persons whose crimes were serious or who have extensive prior records will tend to be treated similarly by both jurisdictions. They will be given long sentences and will have difficulty in obtaining early release. The net result is that the strict jurisdiction, because of its larger proportion of short-timers, has a smaller average duration of imprisonment.

An additional contribution can result from pretrial release policies. In the lenient jurisdiction, liberal bail standards and the use of alternative modes of release will result in relatively few persons being jailed before trial. A much larger proportion will be detained in jail in the strict jurisdiction. Then, after sentencing, the time spent in jail generally will be credited toward the sentence, resulting in a correspondingly shorter stay in prison for the stricter jurisdiction.

Mean vs. median

In tables 1 and 2, the numbers are mean values of time served (that is, conventional arithmetic averages). A disadvantage in dealing with means is that a few cases that are very much larger or very much smaller than the others can have a strong influence on the mean value. For example, in one State the mean time served by persons who had been convicted of robbery was 61.5 months. There were 636 people in that group. It is known that one was a man in his eighties who had entered prison in 1918; he had served 763 months. If he is removed from the group, the mean time served by the other 635 robbers is 60.4 months. The difference is noticeable but not significant. Examination of the data from which the numbers in the tables were derived indicates that this generally is the case.

The median is the value that divides a group in half: exactly half of the values are greater than the median and half are smaller. It is less susceptible than the mean to distortion by a few extreme values. Data for computing median values of time served were not obtainable in all cases, but the available data show that, nearly always, the median time served is a few months less than the mean, and that the medians and the means exhibit similar variations from offense to offense and from State to State. The following comparison for robbery is typical. (The mean values are the same as in table 2.)

State	Time served for robbery (months) Mean	Median
Delaware[a]	39.3	34.3
Iowa[a]	51.7	46.8
Maryland[a]	61.5	54.1
Oklahoma	29.7	24.5
Oregon	25.2	22.0
Pennsylvania[a]	33.5	24.1
Washington	38.8	35.0
Wyoming[a]	29.5	24.3

[a] Includes credited jail time

Table 1. Average (mean) time actually served in prison by felony offenders

State and release period	Number released	Average time served, in months: All felonies	Serious violent crimes[a]	Serious property crimes[b]
Delaware, 1980-82[c]	1,371	17.8	32.5	10.3
Illinois, 1978-82[d]	21,202	23.1	34.0	*
Iowa, 1979-83[c]	4,623	32.8	48.6	26.1
Maryland,1982[c]	3,649	29.5	50.5	21.7
Ohio, 1980-81	12,026	24.6	40.5	20.9
Oklahoma, 1982	2,232	15.4	28.3	13.5
Oregon, 1979-82	5,704	17.2	28.4	14.0
Pennsylvania, 1981-82[c]	6,202	26.7	38.1	21.1
Washington, 7/81-6/82	1,325	26.9	41.3	21.0
Wisconsin, 1/80-5/83	6,679	29.2	39.7	25.2
Wyoming, 7/80-6/83[c]	759	22.9	39.0	20.1

[a] Murder, non-negligent manslaughter, rape, robbery, aggravated assault.

[b] Burglary, larceny, auto theft, arson.

[c] Includes credited jail time.

[d] Derived from data in 1982 Statistical Presentation, Illinois Department of Corrections, April 1983.

*Data not available.

Table 2. Average (mean) time served for specific offenses, in months

State and release period	Criminal homicide[a]	Rape	Robbery	Aggravated assault	Burglary	Larceny	Auto theft	Arson	Drug offenses[b]
Delaware, 1980-82[c]	74.3	25.5	39.3	18.6	15.7	6.5	12.8	9.4	15.0
Illinois, 1978-82[d]	52.1	46.0	29.1	18.7	20.7	14.1	*	*	*
Iowa, 1979-83[c]	72.4	47.1	51.7	33.1	30.5	22.7	15.5	29.9	24.0
Maryland, 1982[c]	63.1	63.7	61.5	30.0	29.2	14.2	20.9	35.6	15.9
North Carolina, 1977-81[c,e]	51.3	*	40.8	19.7	22.2	*	19.4	*	15.7
Ohio, 1980-81	78.6	50.0	34.9	26.6	27.0	15.4	24.9	22.5	17.3
Oklahoma, 1982	39.3	35.6	29.7	17.4	13.8	11.8	15.1	16.4	11.4
Oregon, 1979-82	41.2	36.0	25.2	23.1	15.3	11.3	11.9	25.5	10.4
Pennsylvania, 1981-82[c]	57.4	47.7	33.5	25.4	22.6	16.8	14.8	28.2	18.9
Washington, 7/81-6/82	63.2	36.3	38.8	37.0	*	*	*	*	17.8
Wisconsin, 1/80-5/83	41.8	33.5	42.3	30.7	26.5	22.6	20.6	24.7	22.3
Wyoming, 7/80-6/83[c]	59.5	51.5	29.5	29.4	22.5	15.8	18.2	25.8	15.2

[a] Includes murder and non-negligent manslaughter.

[b] Includes sale and possession.

[c] Includes credited jail time.

[d] See footnote d, table 1.

[e] Derived from data in Clarke, Stevens H. et al, North Carolina's Determinate Sentencing Legislation: An Evaluation of the First Years's Experience, Institute of Government, University of North Carolina at Chapel Hill, October 1983.

*Data not available.

Distribution of values of time served

In virtually all cases, for any offense in any State, the total range of values of time served is very large. There are several values that are far greater than the average; an example is the time served by the octogenarian robber mentioned earlier. In some instances these very long stays in prison may result simply from a sentence that was as long as permitted by law, imposed for an especially serious offense, and followed by behavior in prison that was not conducive to achieving early release. In other cases, time may have been added after entering prison because of gross misbehavior or attempts to escape. Another reason for very long periods of imprisonment can be the imposition of multiple sentences, to be served consecutively, when the offender is convicted on several charges in the same trial.

There are many instances of persons whose time served is close to zero; they are released within a month or so of entering prison. One cause of this may be the use of shock probation in sentencing. This is the imposition of a brief period of confinement (the "shock") to be followed by probation. In some instances, the sentence may have been reduced as the result of an appeal. Another possibility (where credited jail time is not included in the values of time served) is that only a very brief period remained to be served in prison after pretrial jail time was credited.

A typical distribution of values of time served is shown in figure 1. It covers those persons who were released from Oregon prisons in 1979-82 and had been imprisoned for serious violent crimes or serious property crimes. The curves plot cumulative percentages of cases in terms of time served; they show the percent who had served no more than the indicated number of months when they were released. The existence of some extreme cases, very short or very long stays in prison, is apparent from figure 1, with very long stays being relatively more prevalent for violent crimes. More significant, however, is the steep slope of the curves in the vicinity of the median. This indicates that there is a substantial bunching of values that are not far from the median, despite the wide total range.

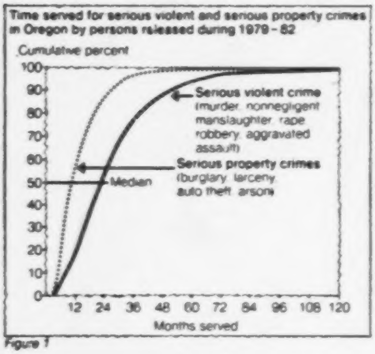
Time served for serious violent and serious property crimes in Oregon by persons released during 1979 - 82

Figure 1

Percent of sentence served

How is the amount of time actually served related to the length of the sentence that was imposed? There are wide variations among the States in the laws that specify sentence ranges, in the discretion given to judges in passing sentence, in whether sentences are determinate (fixed) or indeterminate (such as 2 to 5 years), in the amount of good-time that may be earned, and in the discretion given to parole authorities. As a result, the imposed sentence has vastly different meanings and effects in determining the time that actually is served in different jurisdictions. Because of this, meaningful information cannot be obtained by comparing the percentages of sentences that actually are served in different States. In effect, one would be comparing percentages of different quantities; the important measurement is the actual amount of time spent in prison.

However, comparisons are valid for different offenses in the same State, since the same laws and policies apply. When such comparisons are made, one trend appears to be universal: there is an inverse relationship between the seriousness of the offense and the percentage of the sentence that is served. That is, those who are imprisoned for the most serious crimes (and therefore receive the longest sentences) serve the smallest percentages of their sentences. This is illustrated strikingly by an examination of the ratio between the average percent of sentence served for auto theft and the average percent for criminal homicide in different States. The auto thief serves up to twice as large a percentage of his sentence as the homicide offender:

State and release period	Ratio of % served for auto theft to % served for criminal homicide
Delaware, 1980-82	1.47
Iowa, 1979-83	1.79
Maryland, 1982	1.48
Ohio, 1980-81	1.94
Oregon, 1979-82	1.62
Pennsylvania, 1981-82	1.47
Wisconsin, 1/80-5/83	2.38
Wyoming, 7/80-6/83	1.29

(An example may help clarify the ratios listed above: Suppose an auto thief is sentenced to 24 months in prison, but actually serves 20 months. He has served 83.3 percent of his sentence. Suppose a murderer is sentenced to 30 years, but is released after 15 years. He has served 50.0 percent of his sentence. The ratio of the percent served by the auto thief to the percent served by the murderer is 83.3 divided by 50.0, which equals 1.67.)

Several factors may contribute to this phenomenon. In many States the accumulation of good-time credit by a prisoner is not a linear process; a given amount of good behavior will take substantially more time off a long sentence than a short one. In the case of a very long sentence resulting from a very serious crime, release on parole, even after many years of imprisonment, is likely to occur after a relatively small percentage of the sentence has been served. In some States, a minimum amount of time must be served before release can be considered; a less serious crime may result in a sentence that is not much longer than this statutory minimum amount. If credited jail time is not included in calculating the percent of sentence served, the resulting decrease will tend to be most pronounced for the most serious offenses. That is, as mentioned earlier, the most serious offenders are likely to be detained in jail for the longest periods of time prior to trial.

CONCLUSION

This report has presented an overview of the actual duration of imprisonment, including the average amount of time served for different offenses and groups of offenses in different States and the distribution of the individual values that make up those averages. Some of the factors that determine the time served in prison and that give rise to differences among the States in the values that are reported were considered. The Bureau of Justice Statistics intends to expand on this information through collecting more comprehensive and standardized data on time served and issuing reports covering such topics as sentencing practices, the relationship of offender characteristics to time served, and the effects of recent changes in State laws pertaining to sentencing and release.

Acknowledgment

Grateful appreciation is extended to the directors and staffs of the State criminal justice Statistical Analysis Centers, who provided nearly all of the data used in preparing this report, as well as a vast amount of insightful analysis:

Delaware: Michael H. Rabasca and Patrick W. Vander Veen
District of Columbia: Mary-Paula Walsh
Iowa: Paul Stageberg and Frank Poduska
Maryland: Catherine H. Conly and Steven C. Martin
North Carolina: David E. Jones
Ohio: Jeffrey J. Knowles and Stephen Vandine
Oklahoma: Steven P. Davis
Oregon: Clinton Goff and Robert Willstadter
Pennsylvania: Phillip J. Renninger and Douglas Hoffman
Washington: John O'Connell and Glenn Olson
Wisconsin: Stephen W. Grohmann and Thomas Eversen
Wyoming: David J. Roberts.

Bureau of Justice Statistics Special Reports are prepared principally by BJS staff and edited by Jeffrey L. Sedgwick, deputy director for data analysis. Marilyn Marbrook, publications unit chief, administers their publication, assisted by Joyce M. Stanford and Millie J. Baldea. This report was written by Herbert Koppel.

June 1984, NCJ-93924

U.S. Department of Justice
Bureau of Justice Statistics

Bureau of Justice Statistics
Bulletin

Setting Prison Terms

August 1983

In an earlier report, "A National Survey of Parole-Related Legislation," the Uniform Parole Reports program of the Bureau of Justice Statistics provided information on new laws affecting all aspects of parole, including time served in prison. With this report, the bureau inaugurates a new bulletin topic, "Setting Prison Terms," which focuses more sharply on one of the bureau's primary concerns—actual time served before release to parole supervision.

This first report presents the structures in place in January 1983 that determined the length of time a person spent in prison in each of the States, the District of Columbia, and the Federal system. This presentation provides a framework for describing future changes as they go into effect. It contains a single summary picture for each State; it does not reflect all the variations within each State.

Subsequent reports on "Setting Prison Terms" will track legislative developments and related changes made in each State by the judiciary, the parole board, and the department of corrections after January 1983.

Steven R. Schlesinger
Director

The United States has experienced dramatic changes in the laws under which people are sent to prison and in the mechanisms that control how long they stay there. A decade ago, in most jurisdictions, the courts had primary control over who went to prison, subject to negotiations carried out in the plea-bargaining process, within broad limits set by legislative statute. The parole board controlled the length of the prison term within broad limits set by the court and by law.

This general model had many variations but was the predominant approach to setting prison terms. In the past decade, however, legislative control over the sanctioning process has increased, accompanied by concerns about sentencing disparities, doubts about the efficacy of rehabilitation, and increased interest in incapacitation and deterrence. At the same time in some jurisdictions, the judiciary and the parole boards have taken steps to formalize their control over specific components of the sanctioning process. This report covers the January 1983 status of the key forms this change has taken. They can be grouped in the following categories:

- **Determinate sentencing**—sentencing systems under which parole boards no longer may release prisoners before their sentences (minus good time) have expired;
- **Mandatory prison terms**—statutes through which legislatures require a prison term always to be imposed for convictions for certain offenses or offenders;
- **Sentencing guidelines**—procedures designed to structure sentencing decisions based on measures of offense severity and criminal history;
- **Parole guidelines**—procedures designed to structure parole release decisions based on measurable offender criteria;
- **Good-time policies**—statutes that allow for reducing a prison term based on an offender's behavior in prison; and
- **Emergency crowding provisions**—policies that relieve prison crowding by systematically making inmates eligible for release sooner.

Prison crowding and prison term policy

Prison term policies such as mandatory prison terms and determinate sentencing influence the size of prison populations insofar as they affect 1) the number of offenders sentenced to prison and 2) the length of time the offender serves in prison before release. Prison statistics show that the prison population is increasing in every State, and parole statistics suggest that the length of time served in prison is also rising. One result has been increasingly crowded State prison systems. Consequently, many States have sought ways to modify prison terms. A variety of measures have been taken. They include—

- sentencing guidelines that use available prison capacity as a consideration in setting the length of terms (such as those in Minnesota);
- mechanisms for accelerating good time; and
- direct release of certain prisoners—usually those already close to their release date—under administrative provisions (such as the emergency crowding law in Michigan, the use of commutation in Georgia, and the early-release program in Illinois).

Control over setting prison terms

The power to set prison terms is distributed in various ways among the legislative, judicial, and executive bodies in each State. In most jurisdictions, for most convictions, it is the judge who decides whether to punish by imprisonment or an alternative. This decision may be shared in part with other actors in the judicial system. Juries, prosecutors, and defense attorneys may recommend sentences. Sometimes dispositions are worked out in advance through plea-bargaining agreements involving the prosecutor, the defendant's attorney, and often the judge as well.

If a convicted offender is to serve a prison term, the judge selects a minimum term, a maximum, or both, within the range provided by the penal code for that offense or offense class. The parole board, based on a regular review of the offender's case, determines the appropriate time for the release of the offender to the community. Versions of this model continue to exist in most States. In each State, the legislature plays an important role in defining the limits of judicial and executive (parole board) powers, restricting discretion or providing leeway to determine the amount of time a person serves in prison.

Court discretion in length of prison terms

The States vary in the degree of court and parole board discretion provided by law. The States can be described as either broad or narrow in the degree of judicial discretion over sentence length (figure 1). Court discretion is defined as narrow if the range of sentencing options available to the judge is restricted by law to less than 1/3 the statutory maximum sentence length for each offense. For example, for persons convicted of a crime carrying a 12-year statutory maximum, judges with narrow discretion must select a sentence from within, at most, a 4-year range.

Under this definition, judicial discretion over sentence length is narrow in 12 jurisdictions. In the remaining 41 jurisdictions court discretion is classified as broad, although the judicially imposed sentence may have little impact on the actual length of time an offender remains in prison.

Parole board discretion

In most States, the parole board may alter the amount of time served in prison by releasing prisoners to community supervision before the maximum sentence date. In some jurisdictions the legislature has limited the releasing power of the parole board by requiring that prisoners must serve a flat minimum or proportion of the maximum sentence before becoming eligible for parole. In other jurisdictions parole board discretion is extensive—relatively unconstrained by law or not constrained at all. In cases where the discretion available to the parole board by law is broad, the board may nonetheless choose to exercise its discretion narrowly.

Forty-one States, the Federal system, the District of Columbia, and the California Youth Authority give some degree of discretion in the release of prisoners to the parole board (figure 1).[1] Where the parole board has this power, persons entering prison may have no clear idea of exactly when they will be released.

Figure 1

Control over the length of time a person serves in prison varies among jurisdictions

Narrow court discretion and no discretionary parole board release

California (CDC)
Colorado
Minnesota
New Mexico
North Carolina

Narrow court discretion and discretionary parole board release

Arizona
California (CYA)
Iowa
Ohio
Pennsylvania
Utah
West Virginia

Broad court discretion and no discretionary parole board release

Connecticut
Illinois
Indiana
Maine

This column includes the nine determinate sentencing states

Broad court discretion and discretionary parole board release

Alabama
Alaska
Arkansas
Delaware
Dist. of Columbia
Federal system
Florida
Georgia
Hawaii
Idaho
Kansas
Kentucky
Louisiana
Maryland
Massachusetts
Michigan
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New York
North Dakota
Oklahoma
Oregon
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Vermont
Virginia
Washington
Wisconsin
Wyoming

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Two persons receiving the same sentence may actually serve different lengths of time in prison. Thus the power of the parole board to release prisoners may diminish the role of the judge in setting prison terms. In the seven jurisdictions where judicial discretion is already relatively restricted—Arizona, California (CYA), Iowa, Ohio, Pennsylvania, Utah, and West Virginia—this parole board discretion further limits the power of the courts to influence time served in prison.

Determinate sentencing

In nine States—California (CDC), Colorado, Connecticut, Illinois, Indiana, Maine, Minnesota, New Mexico, and North Carolina—the discretionary power of the parole board to release prisoners early has been eliminated. Under the sentencing statutes in these nine States, prisoners receive fixed sentences, which they must serve in full, minus any time off for good behavior. These States are commonly known as the determinate sentencing States.

In all determinate sentencing States, parole boards continue to handle revocations and good-time decisions. Discretionary paroling may also continue in these States, to a limited extent, for persons sentenced to life imprisonment, for persons sentenced before the current structure went into effect, or for youthful offenders.

Determinate sentencing first appeared in Maine in 1976. By 1979, six other States (California, Colorado, Illinois, Indiana, Minnesota, and New Mexico) had eliminated the discretionary releasing power of the parole board for all or most State prisoners. During the last 4 years, however, only two States, North Carolina and Connecticut, have abolished parole board discretion. The nine determinate sentencing States differ considerably in the size and nature of their correctional populations and the procedures under which prison terms are imposed.

In the four determinate States with broad judicial discretion (Maine, Connecticut, Illinois, and Indiana), the judge has great power to determine time served in prison. In Maine, statutes provide very broad ranges for four general classes of offenses (each carries a maximum but no minimum). The judge selects a single term from within that broad range, a flat sentence that must be served by the inmate. In Illinois, sentencing ranges are provided for seven classes of offenses. Extended ranges are provided for cases where aggravating factors are present. The judge selects one term from these ranges. The more serious the felony, the broader the sentencing options. For a less serious felony such as shoplifting, the regular sentencing range is 1 to 3 years with an extended range of 3 to 6 years. For a more serious felony such as armed robbery, the regular term range is 4 to 15 years with an extended term range of 15 to 30 years.

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[1] In some instances the California Department of the Youth Authority (CYA) has been distinguished from the California Department of Corrections (CDC). These two State agencies have separate parole boards. In addition to its juvenile commitments the California Department of the Youth Authority can accept at its discretion adult court commitments for those up to age 21; it may hold offenders up to age 25.

By contrast, in the five determinate sentencing States where judicial discretion is narrow—California (CDC), Colorado, Minnesota, New Mexico, and North Carolina—the sentence prescribed by law becomes the most powerful factor in determining actual time served in prison. California law provides three specific sentencing terms for each offense or group of offenses. The middle term must be chosen in the absence of either mitigating or aggravating factors, the latter of which must be charged and proven in court. The prison term imposed must be justified by the proven facts of the case, and each case is reviewed by the Board of Prison Terms. In California, persons convicted of the same offense are likely to serve very similar periods of time in prison. Consequently, plea bargaining to negotiate the offense for which a defendant will be charged becomes particularly crucial in determining sentence lengths.

Mandatory prison terms

For a first-degree murder where the death penalty is not imposed, a prison term has always been customary, and this custom is usually written into law. Many States have identified other offenses for which a prison term is deemed mandatory, and, for these offenses, have legislatively removed the court's discretion over the in/out decision (the decision to impose a prison term or to provide an alternative such as probation, fines, or suspended sentence).

The four broad offense categories in which mandatory prison terms are most often legislated are violent crime, habitual crime, narcotics violation, and crime involving the use or possession of a firearm (figure 2). Almost all of the States have mandatory prison term statutes in at least one of these categories. For those convicted under such statutes, a judge has no choice but to impose a prison sentence.

The most common mandatory prison-term statutes are for violent crime (a category that includes murder); 43 States have such laws. Habitual-offender laws, aimed at the career criminal, are in effect in 30 States. Mandatory prison terms for narcotics and firearm offenses tend to be the result of more recent legislation. Twenty-nine States and the District of Columbia have drug laws with mandatory imprisonment provisions and 37 States and the District of Columbia now have gun laws with mandatory prison terms for certain violations.

Figure 2

Mandatory prison term statutes now exist in most jurisdictions, particularly for certain violent offenses

KEY
V Violent crime
H Habitual offender
N Narcotic/drug law violation
G Handgun/Firearm

	V	H	N	G
Federal system	–	–	–	–
District of Columbia	–	–	N	G
Alabama	V	H	N	–
Alaska	V	H	N	G
Arizona	V	H	N	G
Arkansas	V	H	–	G
California	V	H	N	G
Colorado	V	H	–	–
Connecticut	V	–	N	G
Delaware	V	H	N	G
Florida	V	–	N	G
Georgia	V	H	N	G
Hawaii	V	H	N	–
Idaho	V	H	N	G
Illinois	V	H	N	G
Indiana	V	H	N	G
Iowa	V	–	N	G
Kansas	–	–	–	G
Kentucky	–	H	–	G
Louisiana	V	H	N	G
Maine	V	–	–	G
Maryland	V	H	–	G
Massachusetts	V	H	N	G
Michigan	V	–	N	G
Minnesota	V	–	–	G
Mississippi	V	H	–	G
Missouri	V	–	N	G
Montana	V	–	N	G
Nebraska	V	H	–	–
Nevada	V	H	N	G
New Hampshire	V	–	–	G
New Jersey	V	–	–	G
New Mexico	V	H	–	G
New York	V	H	N	G
North Carolina	V	–	N	G
North Dakota	V	–	–	G
Ohio	V	H	N	G
Oklahoma	–	H	N	–
Oregon	V	–	–	G
Pennsylvania	V	H	–	G
Rhode Island	–	H	N	G
South Carolina	V	H	N	–
South Dakota	V	–	N	–
Tennessee	V	H	N	–
Texas	V	H	–	–
Utah	–	–	–	–
Vermont	–	–	–	–
Virginia	–	–	–	G
Washington	V	–	N	G
West Virginia	V	H	–	G
Wisconsin	V	–	–	–
Wyoming	V	H	N	–

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Statutes setting mandatory minimums are not necessarily the same as mandatory prison-term statutes. For example, a habitual-offender statute that dictates a mandatory minimum sentence or a statutory add-on term may be relevant only if the judge chooses a prison sentence. Mandatory prison-term statutes refer only to those crimes for which the court's discretion over the in/out decision has been eliminated by law.

Sentencing guidelines

In some States, the judge's decision to impose a prison term is constrained by the existence of sentencing guidelines (figure 3). Sentencing guidelines consider the relative severity of an offense along with an offender's prior criminal history and background to derive a recommended sentence for the court. Three States—Minnesota (1980), Pennsylvania (1982), and Utah (1979)—have established statewide sentencing guidelines with specific recommendations on the in/out decision as well as the length of prison terms. In Minnesota and Pennsylvania, sentencing guidelines have been approved by the State legislature and written into law. In Utah, the State court system has guidelines formulated by administrative policy. In Washington, Florida, and Maryland statewide guidelines have been legislatively ratified but in January 1983 were not yet in effect.

While the criminal statutes in virtually all States detail a general range of sentencing options deemed appropriate for any particular crime, sentencing guidelines attempt to direct the court to the available options it should choose in any given case. In each of the sentencing-guideline States, a sentence range is specified for most offenses based on the seriousness of the offense and the extent of the criminal history of the offender.

The range and form of the prescribed sentence can vary significantly from State to State, as the cases of Minnesota and Pennsylvania demonstrate. In Minnesota, a non-imprisonment alternative is the recommended sentence for most property crimes in which the offender's criminal history is not extensive. Pennsylvania guidelines, in contrast, generally specify non-confinement only for misdemeanor offenses where mitigating circumstances are involved. For normal misdemeanor cases, minimum ranges of 0 to 6 or 0 to 12 months are specified regardless of an offender's prior record. Furthermore, Minnesota sentencing guidelines provide judges with a relatively narrow sentence range for a given level of offense severity combined with a given history of criminal activity. From this range, one fixed term is chosen. Pennsylvania sentencing guidelines, however, are broad, specifying a minimum range, an aggravated minimum range, and a mitigated minimum range,

Figure 3

Three states have system-wide sentencing guidelines

Sentencing guidelines are written into state statutes	Minnesota (1980) Pennsylvania (1982)
Sentencing guidelines are system-wide policy but are not written into state statutes	Utah (1979)
Sentencing guidelines may be applied in selected jurisdictions or on an experimental basis	Maryland (1981) Massachusetts (1980) Rhode Island (1980) Vermont (1982) Washington (1979) Wisconsin (1981)

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from which the judge chooses a minimum term. (The maximum term is set by statute.)

A sentencing commission in each State monitors the use of the guidelines and departures from the recommended sentences by the judiciary. Written explanations are required from judges who depart from guideline ranges. The Minnesota Sentencing Guidelines Commission states that "while the sentencing guidelines are advisory to the sentencing judge, departures from the presumptive sentences established in the guidelines should be made only when substantial and compelling circumstances exist." Pennsylvania sentencing guidelines stipulate that court failure to explain sentences deviating from the recommendations "shall be grounds for vacating the sentence and resentencing the defendant." Furthermore, if the court does not consider the guidelines or inaccurately or inappropriately applies them, an imposed sentence may be vacated upon appeal to a higher court by either the defense or the prosecution.

Six other court systems—Maryland, Massachusetts, Rhode Island, Vermont, Washington, and Wisconsin—have sentencing guidelines that currently apply only in certain jurisdictions or to a limited range of offenses. In some cases these selectively applied guidelines represent the pilot phase of a study that may eventually lead to the establishment of a statewide sentencing guideline policy.

Parole guidelines

In 14 States, the District of Columbia, and the Federal system, the discretion of the parole board to release prisoners is limited by explicit parole guidelines enacted by the legislature or voluntarily adopted by parole boards (figure 4). In California, parole release has been eliminated for all prisoners under the authority of the California Department of Corrections except for those serving life imprisonment terms. The Board of Prison Terms applies parole guidelines to determine prison-term lengths for those prisoners. In Minnesota, parole guidelines are used only for prisoners sentenced before the advent of determinate sentencing in 1980.

Figure 4

Fifteen jurisdictions have system-wide parole guidelines

Guidelines for paroling decisions are written into statutes	Federal system (1973) Florida (1978) New York (1977)
Guidelines for paroling decisions are system-wide policy but are not written into statutes	Alaska (1981) California (CYA, 1978) Dist. of Columbia (1982) Georgia (1980) Maryland (1979) Missouri (1982) New Jersey (1980) Oklahoma (1980) Oregon (1979) Pennsylvania (1980) Utah (1979) Washington (1979)
Guidelines for paroling decisions are selectively applied	California (CDC, 1977) Minnesota (1976)

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Although nearly all States have legislative statutes that define general criteria for parole release, formal parole guidelines attempt to make these criteria explicit and measurable. Parole guidelines are used by parole boards to measure the presumed risk that an offender will commit additional crimes while on parole based on such factors as the offender's prior convictions, substance abuse history, and prison behavior. A decision on when to release an offender (i.e., on how long a term should be served) is then made by the parole board based upon both the presumed risk and the severity of the current offense. Most guidelines allow for exceptions to specified term lengths if mitigating or aggravating circumstances are involved. Prison behavior, either good or bad, is often considered.

Reducing prison terms: Good-time policies

Good-time policies in most States significantly contribute to prison-term reduction. All but four States (Hawaii, Pennsylvania, Tennessee, and Utah) award prisoners days off their minimum or maximum terms for maintaining good behavior or participating in various prison activities or programs (figure 5). The amount of good time that can be accrued varies widely among States—from 5 days a month to 45 days a month in several States. Good time can be an incentive to encourage cooperative behavior, and can result in a major reduction of the sentenced term.

Good-time policies are often written into State statutes but may also be nonstatutory system-wide correctional policies. Good time is typically awarded and administered by a State's department of corrections or by individual prison wardens.

Forty-one States, the Federal system, and the District of Columbia award good-time credit to prisoners for good behavior (figure 5). Typically, this credit is automatically awarded and subtracted from a prisoner's sentenced term at the time of prison entry and then rescinded in whole or in part for unsatisfactory behavior. In Oregon, good-behavior credit is subtracted from the maximum sentence and so does not affect a prisoner's parole eligibility date or actual time served unless the prisoner is not paroled and serves the

Figure 5

All but four jurisdictions have provisions for the administrative reduction of the length of time spent in prison

KEY
B Reductions for good behavior
P Reductions for program participation

	B	P
Federal system	B	P
District of Columbia	B	-
Alabama	B	P
Alaska	B	-
Arizona	B	-
Arkansas	-	P
California	-	P
Colorado	B	P
Connecticut	B	P
Delaware	B	P
Florida	B	P
Georgia	B	-
Hawaii	-	-
Idaho	B	P
Illinois	B	P
Indiana	B	-
Iowa	B	P
Kansas	B	P
Kentucky	B	P
Louisiana	-	P
Maine	B	P
Maryland	B	P
Massachusetts	B	P
Michigan	B	P
Minnesota	B	-
Mississippi	B	P
Missouri	B	P
Montana	B	P
Nebraska	B	P
Nevada	B	P
New Hampshire	-	P
New Jersey	B	P
New Mexico	B	P
New York	B	-
North Carolina	B	P
North Dakota	B	P
Ohio	B	-
Oklahoma	-	P
Oregon	B	P
Pennsylvania	-	-
Rhode Island	B	P
South Carolina	B	P
South Dakota	B	-
Tennessee	-	-
Texas	B	P
Utah	-	-
Vermont	B	P
Virginia	B	P
Washington	B	-
West Virginia	B	P
Wisconsin	B	P
Wyoming	B	P

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maximum term. But more often the minimum sentence is reduced by good time, so that good-time policies become a significant element in prison-term length. This is particularly relevant for States that have eliminated discretionary parole release.

A few States award good time in ways that do not reduce sentence length. In New Hampshire, for example, a number of "disciplinary days" are automatically added to the minimum term, and it is from this number that good behavior days are subtracted. If the prisoner accrues all of his good time, the disciplinary days will be canceled out, and his parole eligibility date will occur, as scheduled, on the completion of his minimum sentence. Otherwise, he is penalized by a delay in his eligibility date.

Good-time reductions based on positive actions of the prisoner are in effect in 33 States and the Federal system (figure 5). These reductions result from participating in various programs (work, school, rehabilitative counseling, medical research, blood donation) or from meritorious conduct (including success under minimum security). In January 1983, the California Department of Corrections eliminated automatic time off for good behavior; prisoners sentenced after that date must earn all their good time through work or school participation.

Emergency crowding provisions

Another, and slightly different, kind of prison-term reduction has come about in response to prison crowding. For example, Michigan's Emergency Overcrowding Act requires that when the prisons are over 100% capacity for 30 days, an emergency is declared, and all parole eligibility dates are moved forward by 90 days. Similar rollback schemes have been adopted by Connecticut, Georgia, Illinois, Iowa, Ohio, and Oklahoma and are pending in several other State legislatures.

Technical note

Information presented in this bulletin was sent to the Court Administrator, Parole Board Chairman, and Attorney General in each State for verification. The characterization of States is based on the laws in effect in January 1983.

Further reading

For more information see—

- A National Survey of Parole-Related Legislation Enacted During the 1979 Legislative Session. Bureau of Justice Statistics, December 1979, NCJ-64218.
- Probation and Parole 1981, August 1982, NCJ-83647.
- Prisoners in 1982, April 1983, NCJ-87933.

Bureau of Justice Statistics Bulletins are prepared by the staff of the bureau. Carol B. Kalish, chief of data analysis, edits the bulletins. Marilyn Marbrook, publications unit chief, administers their publication, assisted by Julie A. Ferguson. The principal author of this bulletin is Jim Galvin of the National Council on Crime and Delinquency with the assistance of Brad Smith, Tanya Broder, Vince Valvano, Leslie Reiber, and David Schaitberger.

August 1983, NCJ-76218

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Bureau of Justice Statistics
Special Report

Sentencing Practices in 13 States

By Herbert Koppel
Statistician, BJS

October 1984

A fundamental issue in the administration of justice concerns the type and length of sentences given to convicted offenders. In this Special Report, the Bureau of Justice Statistics reports findings from a survey of selected States.

Among key findings are the following: despite the wide diversity among States in their sentencing systems, there appears to be a reasonable consistency in the end results produced; incarceration is much more likely for serious crimes against the person than for property crimes or drug crimes; the likelihood of incarceration increases markedly with increasing severity of the offense and increasing seriousness of the offender's criminal history; and rates of incarceration and sentence lengths appear comparable from State to State for similar crimes committed by persons with similar criminal records, when differences among sentencing systems are taken into account. In most cases, these data were obtained from criminal justice Statistical Analysis Centers in the States. Such centers have been established with support from the Bureau of Justice Statistics in 40 States, the District of Columbia, Puerto Rico, and the Virgin Islands. In addition to providing data to BJS, their functions are the gathering, analysis, and dissemination of statistical information pertaining to crime and criminal justice in their States for the benefit of decisionmakers, criminal justice practitioners, and the public.

The Bureau of Justice Statistics will continue to report on sentencing practices in the States as further changes occur and will attempt to expand the data base to include all States.

Steven R. Schlesinger
Director

The sentencing of a convicted offender is a key event in the complex process by which criminals in the United States are brought to justice. The judge is acting for society in determining whether or not the offender will go to prison and, if so, for how long. This report will examine the sentencing of convicted felons in several States with respect to whether or not they are sent to prison and the lengths of their sentences.

State law and policies

Every State has its own set of laws and practices for sentencing criminals, and the differences among them are substantial. An earlier brief overview of sentencing practices, Setting Prison Terms (Bureau of Justice Statistics Bulletin, NCJ-76218, August 1983), presents much useful descriptive information, as does a recent report by the New York State Division of Criminal Justice Services.[1] However, it requires more than 200 pages to describe the basic features of the sentencing laws in each State.[2]

In addition to the different laws that govern sentencing, there are differences in how specific offenses are defined and classified by the criminal code in each State.

In some States, the law specifies a rather wide range of sentence lengths for each crime; the judge has broad discretion in selecting a sentence from within that range. In other States, the judge's discretion is limited by law to a relatively narrow range of sentence lengths.

The judge usually is empowered to decide whether or not an offender will be sent to prison at all; he can suspend a prison sentence, impose a sentence of probation or a fine or, in some cases, select an alternative to incarceration such as requiring the offender to make restitution or to perform community service. This discretionary power, however, is far from absolute; as of January 1983, 48 States and the District of Columbia had enacted laws mandating a prison sentence for certain serious offenses or under certain aggravating circumstances.[3] Examples include use of a firearm in committing a felony, certain violations of drug laws, and a history of prior felony convictions.

The judge's sentence is not the only factor that determines the length of an offender's stay in prison. The parole board often has considerable discretionary power in deciding when a prisoner will be released. In some States, the board can release a prisoner at any time after incarceration. In at least nine States, parole board discretion has been abolished completely.[4] Most parole boards have discretionary authority that falls between these limits. In addition, 47 States, the District of Columbia, and the Federal system have provisions that enable an inmate to earn "good time"; that is, a reduction in the length of the prison stay through good behavior or participation in certain programs.

Sentencing systems

Differences among sentencing systems are so great that any comparison of sentence lengths among States is nearly meaningless unless the sentencing systems are taken into account. In some States, sentences may be relatively short, but with a high probability that all or nearly all of the sentence actually will be served. In other States, the sentences may be very long, but most offenders will be released after serving only a fraction of the sentence imposed by the courts.

There has not been complete consistency in defining the various types of sentencing systems that are used by the States. The following definitions have been adapted from those developed by the New York State Division of Criminal Justice Services.[5]

Indeterminate sentencing. In jurisdictions that use indeterminate sentencing, the court sets upper and lower bounds on the time to be served. The lower bound may be explicit or implicit. The actual release date (and therefore the time actually served) is determined subsequently by parole authorities.

With minimum/maximum indeterminate sentencing, the court specifies both minimum and maximum prison terms, but the parole board determines the actual release date within those limits. The States vary as to whether "good time" may be deducted from the minimum, the maximum, or both.

With fixed indeterminate sentencing, only a single prison term is specified by the court, but it is treated as a maximum for which an associated minimum automatically is implied. The implied minimum might be zero for all sentences, one year for all sentences, or a fixed proportion of the maximum.

Determinate sentencing. The court specifies a fixed term of incarceration which must be served in full (less any "good time" earned in prison). There is no discretionary parole release.

Mandatory sentencing. The court is required to impose an incarcerative sentence, often of specified length, for certain crimes or certain categories of offenders. There is no option of probation, suspended sentence, or immediate parole eligibility.

Presumptive sentencing. The judge's discretion is constrained by a sentence length that is set by law for each offense or class of offense. This sentence must be imposed in all unexceptional cases. When there are mitigating or aggravating circumstances, however, the judge is allowed to shorten or lengthen the sentence within specified boundaries, usually with written justification being required.

In recent years, a number of States have reformed their sentencing systems, most often changing from indeterminate sentencing to a determinate system in which presumptive or mandatory provisions are included and parole discretion is eliminated or drastically curtailed.

The judge's role

Individual judges differ in the rationales, attitudes, and beliefs that affect their sentencing decisions. A survey in Delaware[6] asked judges of the Superior Court to assign priorities to five possible rationales for sentencing decisions: rehabilitation; deterrence of the offender from further criminality through fear of punishment; deterrence of others; retribution; and incapacitation (protection of the public while the offender is incarcerated). The survey found "an absence of a common philosophy or rationale for punishment" among the judges and concluded that "the dispersion of action and opinion in the judiciary is as diverse as would be found in the general population."

It may be that, in at least some instances, the judge making a sentencing decision takes into account the possibility of early release through parole and the accumulation of "good time." As an illustration, the Delaware survey states that a judge would have to impose a sentence of 19 years to be sure that the person would remain incarcerated for at least 5 years. A striking example occurred recently in Maryland. A man who had murdered three people and wounded several others at his former place of employment was convicted on 75 charges and sentenced to 3 consecutive life terms plus 1,080 years.

Several States have instituted or are considering the use of sentencing guidelines. Such guidelines are aimed at improving the consistency and rationality of sentencing by basing sentencing decisions upon offense severity, the offender's criminal record, prevailing sentencing patterns, or some combination of these factors. The guidelines may be advisory, or they may be prescriptive and presumptive, requiring the judge to explain sentences outside the specified ranges.

Incarceration rates

When a convicted person is sentenced, the most fundamental decision is whether or not he or she will be incarcerated. The judge usually is free to make this decision but, in many States, incarceration is mandatory for certain serious offenses or for persons with prior felony convictions. Also, the judge may be required to provide written justification for any departure from presumptive guidelines.

Not every sentence to incarceration involves a substantial term of confinement in a State prison. In some States, a very short term may be imposed, which may be served in a county jail or State prison, in cases where the offender does not have a significant criminal record and where the offense was not especially serious or significant mitigating factors were involved. Such short sentences often are combined with other sanctions such as fines, restitution, performance of community service, or participation in drug or alcohol treatment programs. Several States make use of split sentences, which consist of a short prison term to be followed by an extensive period of supervised probation. Some sentences provide for part-time incarceration; typically, the person is released during the day to work at an outside job, but spends nights and weekends in confinement. In most of the data that follow, a sentence is considered incarcerative if it involves any amount of confinement.

Specific offenses. Table 1 shows the incarceration rates (percentage of convictions that resulted in sentences of incarceration) for certain categories of offenses in six States.

Because of the different ways that offenses are defined by statute in the various States and the different formats in which the States provided their data, and because of the different ways individual statutory offenses had to be combined to fit generic crime categories, the comparability of this information is somewhat limited. In particular, where different States show significantly different incarceration rates for the same crime category, this may be caused by differences in the specific offenses that were included in

Table 1. Incarceration rates for specific crime categories

Crime type	Iowa[a] 1980-83		New York 1982		Oklahoma 1978-82		Pennsylvania 1981		Washington 1971-82		Wyoming 1981-84	
	Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated
All felonies	**2,125**	**39.3%**[b]	**22,287**	**44.5%**	*	*	**37,147**	**35.0%**[b]	**78,036**	**20.3%**	*	*
Serious violent crimes[c]	**161**	**74.5**	**7,380**	**67.7**	**7,472**	**57.3%**	**4,507**	**59.7**	**14,854**	**38.3**[d]	**427**	**56.7%**
Criminal homicide[e]	22	86.4	893	90.6	599	78.1	484	73.3	1,834	52.8	72	88.9
Rape	28	92.9	224	97.8	618	71.0	198	77.3	4,530	27.2[d]	86	68.6
Robbery	38	100.0	5,290	67.4	2,506	79.2	2,010	73.4	3,464	56.1	111	57.7
Aggravated assault	73	50.7	973	41.5	3,749	37.2	1,815	39.1	5,026	30.8	158	34.8
Serious property crimes[f]	**849**	**31.2**	**6,585**	**36.2**	**19,822**	**36.5**	**9,131**	**43.9**	**40,506**	**19.3**	**1,309**	**35.0**
Burglary	351	36.5	5,124	38.8	9,168	43.6	3,165	61.3	*	*	731	37.4
Larceny	382	25.4	1,235	24.8	7,895	25.1	5,393	33.7	*	*	381	28.1
Auto theft	98	33.7	g	g	2,379	46.9	447	41.6[h]	*	*	152	42.1
Arson	18	36.8	226	40.7	380	37.6	126	53.2	*	*	45	31.1
Drug crimes	**148**	**29.7**	**3,168**	**38.9**	**6,982**	**33.9**	**3,606**	**26.9**	**13,911**	**12.1**	**253**	**43.9**

* Data not available.
[a] Three counties.
[b] Includes certain misdemeanors which would be classified as felonies in many other states.
[c] Criminal homicide, rape, robbery, and aggravated assault.
[d] Includes other sex crimes in addition to rape.
[e] Includes murder and non-negligent manslaughter.
[f] Burglary, larceny, auto theft, and arson.
[g] Auto thefts in New York are included with larceny.
[h] Due to statutory changes, many auto thefts in Pennsylvania are included with larceny.

the category rather than by differences in sentencing policy.

For example, drug offenses may range from smoking marijuana to the large-scale distribution of heroin. In the case of robbery, most States define several separate statutory offenses of different degrees of severity, depending upon such considerations as whether a weapon was used and the extent of injury to the victim. Incarceration is more likely (and sentence lengths are greater) for the more serious statutory offenses within a given category. When data for the various statutory offenses are aggregated, the combined incarceration rate for the entire category can be affected significantly by which statutory offenses are included and their relative prevalence.

Despite these limitations, table 1 shows quite clearly that incarceration is much more likely for serious crimes against the person than for property or drug crimes.

Offense severity and criminal record. It is useful to examine incarceration rates in terms of offense severity and the offender's criminal record, instead of relying upon definitions of specific offenses that are difficult to reconcile among the different States. In several States, the law groups offenses into classes of different severity, and in some cases the statutes define categories of offenders in terms of their prior criminal records. Where such legal categories do not exist, researchers have devised similar categories for use in their investigations.

The data in table 2 are presented separately for each State because of the different ways that offenders and offenses have been grouped into categories. These data show the percent of convictions that resulted in incarcerative sentences.

Table 2 shows that, in virtually all cases, the likelihood of incarceration increases markedly with increasing severity of the offense and increasing seriousness of the offender's criminal history.

For the data from Illinois, New York, and Connecticut, the felony classes are defined by statute and are listed in decreasing order of severity. For Minnesota, the three tabulated severity categories are condensed from the ten levels of severity defined by the State's sentencing guidelines. For North Carolina and Maryland, offenses have been classified by the nature of the crime (violent crimes, property crimes, drug crimes, etc.), and these categories are listed in what is generally perceived to be the order of decreasing severity.

All of the offender classifications in table 2 are based on the number and seriousness of the person's previous convictions. The classifications in New York are defined by statute. Minnesota's sentencing guidelines define seven levels of criminal history scores; these have been condensed into the three levels used in the tabulation. The offender classifications were defined by researchers for Connecticut and by the sentencing guidelines advisory board for Maryland.

Effects of guidelines and changes in sentencing laws. The Minnesota guidelines were designed to embody retribution as the primary purpose of sentencing.[7] Because of this, they place more emphasis upon the seriousness of the current offense and less upon the offender's criminal history than usually had been the case in the past. The data in table 2 show that this objective was achieved. For example, in the case of the most severe offenses being committed by those with the least serious criminal histories, the incarceration rate increased from 47.4% to 79.0%. For those with moderately serious criminal histories who were convicted of the least severe offenses, the incarceration rate dropped from 38.4% to 9.6%.

The preguidelines data for Maryland were not used because of the small sample size (339 cases) and because no significant difference in incarceration rates had been observed between corresponding portions of the preguidelines and postguidelines samples. This similarity is not surprising, since the guidelines that were tested in Maryland were intended to reduce unwarranted variations in sentencing rather than to bring about a change in the aims or philosophy of sentencing.[8]

In North Carolina (table 2) incarceration rates increased for all types of felonies (except "morals" offenses) after determinate sentencing was instituted. This is somewhat surprising because the new legislation did not affect the judge's power to decide whether or not a convicted person would be incarcerated. It has been conjectured that the judges may have been influenced by the legislation in interpreting the specified prison terms as a tacit recommendation by the legislature for incarceration, or that the increased incarceration rates were merely the continuation of a previous trend toward more frequent use of imprisonment.[9]

Arrest offense vs. charged offense vs. conviction offense. The data for Connecticut (table 2) include some

Table 2. Percent of convictions resulting in incarceration for selected States based on offense and criminal history classifications

Illinois, 1979-81

Offense class[a]	Number of convictions	Percent
All felonies	**76,787**	**39.3%**
M (murder)	1,092	99.9[b]
X	6,713	100.0
1	1,748	57.0
2	26,591	37.7
3	31,547	26.5
4	9,096	33.0

[a] By statute, there are six classes of felony offenses that are based on the severity of the offense; they are presented in order of decreasing seriousness. In general, a particular class can include property and violent crimes. The class of a particular offense depends upon factors such as injury or loss to the victim, weapons use, etc.

[b] Does not include 54 death sentences.

New York, 1982

	Offender classification							
	Youthful		First offender		Repeat[a]		All offenders	
Felony class[b]	Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated
All felonies	**2,722**	**7.5%**	**16,987**	**42.2%**	**2,578**	**99.1%**	**22,287**	**44.5%**
A	2	50.0	439	95.7	25	100.0	466	95.7
B	165	23.0	2,116	94.1	371	99.7	2,652	90.5
C	587	14.3	2,780	77.2	507	99.4	3,874	70.6
D	1,341	5.0	6,686	29.7	937	99.4	8,964	33.3
E	627	2.2	4,966	12.7	738	98.3	6,331	21.6

[a] Includes persons classified as second felony offenders, persistent felony offenders, second violent felony offenders, and persistent violent felony offenders.

[b] By statute, there are five classes of felony offenses based on severity of the offense; they are presented in order of decreasing seriousness. Violent and property offenses appear in all classes. The class of a particular offense depends upon factors such as injury or loss to the victim, weapons use, etc.

Connecticut, 1979-80 (statewide sample)

	Criminal history[a]							
	None		Moderate		Serious		All offenders	
Felony class[b]	Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated
All felonies	**377**	**45.1%**	**303**	**58.1%**	**327**	**77.8%**	**1,007**	**59.6%**
A	1	100.0	2	100.0	3	100.0	6	100.0
B	111	53.2	92	69.6	108	87.0	311	69.8
C	78	48.7	58	62.1	69	79.7	205	62.9
D	95	49.5	104	61.5	95	76.8	294	62.6
Misdemeanor[c]	92	27.2	47	21.3	52	55.8	191	33.5

[a] Based on number and seriousness of previous convictions.

[b] By statute, there are four classes of felony offenses based on severity of the offense; they are presented in order of decreasing seriousness. In general, a particular class can include property and violent crimes. The class of a particular offense depends upon factors such as injury or loss to the victim, weapons use, etc.

[c] Misdemeanor convictions resulting from plea bargaining where original charge was a felony.

misdemeanor convictions that resulted from plea bargaining where the original charge had been a felony. Plea bargaining, with respect to the charge and the sentence, is prevalent in many jurisdictions. The aggregate data from Connecticut for 1976-77 and 1979-80 cover 2,756 convicted persons. Only 92 were tried; the other 2,664, or 96.7%, were convicted as the result of guilty pleas. For the Maryland postguidelines sample of 2,928 convicted persons, 74.9% were convicted through guilty pleas.

Plea bargaining is not the only reason that the level of the offense may be reduced between arrest and conviction. Often the formal charge filed by the prosecutor is for a lesser offense than the one for which the police had made the arrest. The police need only show "probable cause" when making an arrest; the prosecutor must be prepared to prove guilt "beyond a reasonable doubt."

Table 3 shows data from Oregon covering persons who were arrested in 1979.[10] These data provide information on the relationship between incarceration rates and whether or not the conviction offense was the same as the arrest offense. These data also include the percentage of convicted persons who were sentenced to any incarceration and the percentage who were sentenced to at least 1 year. Incarceration rates were higher, for both violent crimes and property crimes, when the arrest offense and the conviction offense were the same.

Sentence lengths

Average (mean) sentence lengths for various offenses and groups of offenses are shown in tables 4, 5, and 6. The three tables cover, respectively, minimum/maximum indeterminate sentences, fixed indeterminate sentences, and determinate sentences. As noted earlier, extreme caution must be used in making comparisons among the different States because of differences in the statutory definitions of offenses and in the ways individual offenses have been aggregated. In general, the tables show that the longest sentences are imposed for serious crimes against the person.

Data for Illinois are shown for minimum/maximum indeterminate sentences (table 4) and for determinate sentences (table 6) during the years 1978-82. Determinate sentencing was initiated near the beginning of that period, but persons whose offenses were committed when the indeterminate sentencing laws were in effect were subject to punishment under those laws. The average lengths of determinate sentences tend to fall between the average minimum and maximum lengths of corresponding indeterminate sentences. This is to be expected, since the latter represented only upper and lower bounds on the time that the convicted persons would serve.

There is a noticeable exception in the case of serious violent crimes as a group. For indeterminate sentences, the average minimum and maximum sentences were 131 months and 277 months; the average determinate sentence was only 102 months. This may be because the crimes in this group for which extremely long sentences are imposed, criminal homicides, take longest to process in the courts. A large percentage of such cases go to trial rather than being settled through guilty pleas, and it often takes considerable time to prepare and conduct the trials. As a result, a large number of homicide sentences were for offenses that dated back to the era of indeterminate sentencing, while sentencing had not yet occurred for many homicides committed after determinate sentencing was instituted. The tables show that, for serious violent crimes as a group, 25% of the indeterminate sentences were for criminal homicide, in contrast to only 16% of the determinate sentences. This may account for the disproportionately long minimum/maximum indeterminate sentences.

Data for North Carolina show sentence lengths for fixed indeterminate sentencing in 1979 (table 5) and for determinate sentencing in 1981-82 after the enactment of the State's "Fair Sentencing Act" (table 6). The determinate sentences are shorter; this is

Table 2. (Continued)

Minnesota, 1978 and 1980-81

Offense severity*	Criminal history score*: None/Low, Number of convictions	Percent incarcerated	Moderate, Number of convictions	Percent incarcerated	High, Number of convictions	Percent incarcerated	All offenders, Number of convictions	Percent incarcerated
Before the introduction of presumptive sentencing guidelines								
All felonies	**3,326**	**9.9%**	**732**	**46.2%**	**307**	**70.5%**	**4,365**	**20.2%**
Low severity	1,872	4.7	385	38.4	162	62.2	2,420	13.9
Moderate severity	1,210	10.5	273	46.7	109	73.1	1,592	21.0
High severity	244	47.4	73	85.5	36	100.0	353	60.6
After the introduction of presumptive sentencing guidelines								
All felonies	**4,031**	**6.5%**	**1,018**	**24.3%**	**451**	**70.7%**	**5,500**	**15.0%**
Low severity	2,122	0.6	478	9.6	222	50.4	2,822	6.0
Moderate severity	1,680	4.0	443	24.4	186	88.2	2,309	14.7
High severity	229	79.0	97	95.9	43	100.0	369	85.9

Note: Under Minnesota law, both before and since introduction of sentencing guidelines, a convicted person may have to spend up to a year in jail or workhouse as a condition of a stayed felony sentence. Incarceration rates shown above do not include such confinement.

* The sentencing guidelines in Minnesota use 7 levels of criminal history scores and 10 levels of offense severity, which have been condensed into 3 levels each for this table.

North Carolina, 1979 and 1981-82 (statewide sample)

Offense class	Before Fair Sentencing Act*: Number of convictions	Percent incarcerated	After Fair Sentencing Act*: Number of convictions	Percent incarcerated
All felonies	**9,752**	**54.7%**	**3,034**	**62.8%**
Class 1 (violent felonies)	2,231	79.5	666	84.5
Class 2 (felonious larceny, breaking or entering, receiving stolen goods, etc.)	4,481	55.2	1,452	65.3
Class 3 (fraud, forgery, embezzlement, etc.)	1,061	39.1	336	44.6
Class 4 (drug felonies)	1,642	30.9	515	39.6
Class 5 ("morals" felonies)	117	71.8	25	68.0
Class 6 (other felonies)	220	35.9	40	60.0

* North Carolina's "Fair Sentencing Act" instituted determinate sentencing in July 1981.

Maryland, 1981-82 (entire postguidelines sample)

Type of offense	Prior criminal record: None, No. of convictions	Percent incarcerated	Minor, No. of convictions	Percent incarcerated	Moderate, No. of convictions	Percent incarcerated	Major, No. of convictions	Percent incarcerated	All offenders, No. of convictions	Percent incarcerated
Total	**1,311**	**39.7%**	**973**	**65.2%**	**443**	**84.6%**	**201**	**89.1%**	**2,928**	**58.3%**
Person	551	55.9	334	76.6	160	91.3	70	87.1	1,115	69.1
Property	449	35.4	440	68.9	219	83.1	104	91.3	1,212	61.0
Drug	311	17.0	199	37.7	64	73.4	27	85.2	601	32.9

consistent because the earlier indeterminate sentences represented only an upper bound on the amount of time that would be spent in prison.

Offense severity and criminal record. As would be expected, average sentence lengths are longest for the most severe offenses and for those offenders with the most serious prior criminal records. This is illustrated by the data for Illinois and New York in tables 7 and 8. The offense classes in both States and the offender classifications in New York are defined by statute.

Conclusions

While the most prominent characteristic of the sentencing systems used by the States is their wide diversity, there appears to be a reasonable consistency in the end results produced. The highest rates of imprisonment and the longest sentences accrue to those who have been convicted of the most severe crimes and to those whose prior criminal histories are most serious. Rates of incarceration and sentence lengths are comparable from State to State for similar crimes committed by persons with similar criminal records, when differences among the sentencing systems are taken into account with regard to the meaning of the sentence in determining how long the offender actually will be imprisoned.

Many States have made fundamental changes in their sentencing systems in recent years, and this trend appears to be accelerating. No fewer than 5 of the 13 States that provided data for this report instituted comprehensive changes in their sentencing laws immediately before, during, or since the periods covered by the data. Connecticut, Illinois, North Carolina, and Washington went from indeterminate to determinate sentencing, and Minnesota instituted the use of presumptive sentencing guidelines. At least two other States, Maryland and New York, are evaluating the use of sentencing guidelines. The changes from indeterminate to determinate sentencing and the introduction of guidelines appear to signal the intention of the States to make punishment more certain, more consistent, and more in keeping with their perceptions of the basic purposes of imprisonment.

Sources of data

Descriptions of the sentencing systems in the States that provided data for this report and characteristics of the data are critically important to the interpretation of the numerical information in this report. It is *imperative* that no attempt be made to interpret the numbers or to make comparisons between States without thoroughly considering this information. Different sentencing systems lead to sentence lengths that have widely different practical meanings. For example, a person sentenced to 10 years in California will serve all or nearly all of the 10 years; in Iowa or Maryland, there is a possibility of release after serving only a fraction of a similar 10-year sentence. In addition, there are substantial differences in how offenses are defined and classified in different States, as well as significant differences in the ways that the data from the States have been collected and aggregated.

California. The judge imposes a determinate term based on presumptive sentence lengths that are set by legislation. Three presumptive sentence lengths are specified for each class of offense; the middle one must be imposed unless there are mitigating or aggravating circumstances. The sentence must be served in full minus any "good time" reduction. There is no early parole release.

Data on sentence lengths for a number of offenses were obtained from two reports with the same title, *Sentencing Practices under the Determinate Sentencing Law*, by the California Board of Prison Terms. The data cover all persons in the State who entered prison from February 1979 through January 1980 (report dated February 11, 1981) and during calendar year 1981 (report dated February 10, 1983). Offenses such as murder, for which life imprisonment or the death penalty can be imposed, are not included. (Some sentences for second degree murder are included in the 1979 data. The penalty for that offense was changed in November 1978; these data are for persons whose offenses were committed before that date, but who entered prison in 1979.)

Connecticut. The data used in this report cover sentences that were imposed during years when the State used minimum/maximum indeterminate sentencing with wide judicial discretion.

Subsequently, in July 1981, legislation was enacted to require the imposition of a determinate prison term. The judge selects the sentence length within wide limits defined by statute for each class of offense. Parole has been abolished; the entire term, less "good time," must be served.

Data were provided by the Connecticut Statistical Analysis Center in a report entitled Sentencing Patterns in Connecticut. The data cover samples of 1,749 persons who were convicted in 1976-77 and 1,011 who were convicted in 1979-80. Each jurisdiction in the State was sampled randomly; in some

Table 3. Oregon: Incarceration rates for persons arrested in 1979

	Incarceration rates for persons arrested for					
	Violent Crimes[a]			Property crimes[b]		
Conviction type	Number of convictions	Percent of convictions	Percent incarcerated	Number of convictions	Percent of convictions	Percent incarcerated
All convictions	**858**	**100.0%**		**2,815**	**100.0%**	
Percent of all convictions resulting in:						
Any incarceration sentence			62.5%			38.3%
Incarceration sentence of at least one year			51.9			22.2
Convictions where arrest offense and conviction offense are the same	**323**	**37.6**		**1,650**	**58.6**	
Percent of these convictions resulting in:						
Any incarceration sentence			73.4%			40.5%
Incarceration sentence of at least one year			69.7			27.2
Convictions where arrest offense and conviction offense are different	**535**	**62.4**		**1,165**	**41.4**	
Percent of these convictions resulting in:						
Any incarceration sentence			55.9%			35.0%
Incarceration sentence of at least one year			41.1			15.2

[a] Criminal homicide, rape, robbery, and aggravated assault.

[b] Burglary, larceny, auto theft, and arson.

Table 4. Minimum/maximum indeterminate sentences, average (mean) sentence length in months

	Connecticut,[a] 1976-77 and 1979-80		Illinois, 1978-82[b]			New York, 1982			
Type of felonies	Number of incarcerative sentences	Minimum	Number of incarcerative sentences	Minimum	Maximum	Number of incarcerative sentences	Minimum	Maximum	Number of maximum life imprisonment sentences
All felonies	*	*	**4,429**	**80 mos.**	**173 mos.**	**9,930**	**40 mos.**	**79 mos.**	**495**
Serious violent crimes[c]	*	*	**2,229**	**131**	**277**	**4,999**	**53**	**99**	**359**
Criminal homicide[d]	22	91 mos.	564	346	743	809	130	156	304
Rape	*	*	125	154	356	219	67	156	10
Robbery	337	42	1,292	55	108	3,567	38	91	44
Aggravated assault	125	24	248	29	79	404	28	69	1
Serious property crimes[e]	*	*	*	*	*	**2,388**	**25**	**59**	**8**
Burglary	175	24	1,057	21	60	1,990	25	61	8
Larceny	246	23	370	16	40	306	18	42	
Auto theft	*	*	*	*	*	f	f	f	
Arson	*	*	*	*	*	92	29	81	
Drug crimes	**213**	**22**	*	*	*	**1,233**	**26**	**59**	**117**

	Pennsylvania,[g] 1981				Wyoming, 1981-84				
	Number of incarcerative sentences	Minimum	Maximum	Number of maximum life imprisonment sentences[h]	Number of incarcerative sentences	Minimum	Maximum	Number of minimum life imprisonment sentences	Number of maximum life imprisonment sentences
All felonies	**13,004**	**14 mos.**	**39 mos.**	**121**	*	*	*	*	*
Serious violent crimes[c]	**2,813**	**25**	**70**	**121**	**242**	**69 mos.**	**112 mos.**	**24**	**31**
Criminal homicide[d]	476	42	112	121	64	146	195	23	30
Rape	153	53	136		59	70	127	1	1
Robbery	1,475	24	68		64	56	99		
Aggravated assault	709	13	40		55	29	61		
Serious property crimes[e]	**4,008**	**13**	**38**		**458**	**25**	**55**		
Burglary	1,940	19	52		273	28	58		
Larceny	1,815	7	25		107	21	47		
Auto theft	186	7	26[i]		64	22	54		
Arson	67	17	51		14	29	61		
Drug crimes	**969**	**9**	**26**		**111**	**19**	**43**		

Note: Life sentences not included in computing mean maximum and mean minimum sentence lengths.

* Data not available.

[a] Maximum-sentence and life-sentence data not available for Connecticut; "criminal homicide" data are for manslaughter only.

[b] Illinois life-sentence data not available.

[c] Criminal homicide, rape, robbery, and aggravated assault.

[d] Includes murder and non-negligent manslaughter.

[e] Burglary, larceny, auto theft, and arson.

[f] New York's auto theft included with larceny.

[g] Pennsylvania data include certain misdemeanors that would be classified as felonies in many other States.

[h] In Pennsylvania, a life sentence has no associated minimum term. Release requires commutation by the Governor.

[i] Because of statutory changes, many auto thefts in Pennsylvania are included with larceny.

cases, small jurisdictions were oversampled. Connecticut law defines four categories of felonies, Class A through Class D, in decreasing order of seriousness. Most of the data are presented in terms of these classes, although information on sentence length is available for certain specific crimes. Some misdemeanor convictions appear in the data; these result from plea bargaining when the initial charge was a felony.

Illinois. The judge sets a determinate term based upon a sentence range prescribed by legislation for each class of offense. There is no early release on parole, but "good time" can be earned.

Incarceration rates for persons convicted of felonies in 1979-81, obtained from the Administrative Office of the Illinois Courts, were provided by the Illinois Statistical Analysis Center. Because of differences in reporting by individual counties, these data are a mix of charge-based and offender-based information. That is, where a person was convicted on more than one charge, in some instances the data include each charge separately, while in other instances the person is represented only once in the data. Sentence lengths are derived from a report, Statistical Presentation 1982, published by the Illinois Department of Corrections in April 1983. These data are charge-based; each sentence is included separately where a person was sentenced on more than one charge. The data cover sentences that were imposed from 1978 through 1982. During those years, there was a transition from minimum/maximum indeterminate sentencing to determinate sentencing, and the report shows sentence lengths for both types of sentences. (The determinate sentencing law took effect in February 1978. Because a convicted person is subject to the penalties that were in effect when the crime was committed, however, a number of sentences in the 1978-82 period were imposed under the old indeterminate sentencing laws.)

Illinois law defines six categories of felony offenses. They are, in order of decreasing seriousness: Class M (murder), Class X, and Classes 1 through 4. Although for some specific offenses there is information on average sentence lengths, in most cases the data are broken down by class of felony.

Iowa. A prison sentence, when imposed, is automatically for a fixed indeterminate term prescribed by statute for each class of offense. The actual release date is determined by the parole board, but the prison stay cannot exceed the statutory sentence length.

Table 5. Fixed indeterminate sentences, average (mean) sentence length in months

	North Carolina, 1979 Statewide sample		Oklahoma, 1978-82			
Crime type	Number of incarcerative sentences	Sentence length (months)	Number of incarcerative sentences	Sentence length (months)	Number of life sentences	Number of death sentences
Serious violent crimes[a]	•	•	**4,367**	**123 mos.**	**179**	**24**
Murder[b]	160	552 mos.	291	168	150	24
Manslaughter	147	164	177	81		
Rape	•	•	443	168	6	
Robbery	681	224	2,017	157	12	
Aggravated assault	176	63	1,439	57	11	
Serious property crimes[c]	•	•	**7,591**	**46**	**5**	
Burglary	1,486	68	4,201	53	2	
Larceny	443	52	2,077	31		
Auto theft	•	•	1,163	49	2	
Arson	•	•	150	55	1	
Drug crimes	**178**	**55**	**2,405**	**39**		

Note: Life sentences not included in computing mean sentence lengths.
• Data not available.
[a] Murder, manslaughter, rape, robbery, and aggravated assault.
[b] North Carolina data are for second degree murder only. Oklahoma data include accessory to murder as well as first and second degree murder.
[c] Burglary, larceny, auto theft, and arson.

Data were furnished by the Iowa Statistical Analysis Center and cover incarceration rates for persons convicted in three counties in 1981-83. These counties contain slightly less than 10% of the State's population. "Aggravated misdemeanors" are included as well as felonies; such misdemeanors in Iowa are punishable by incarceration for up to 2 years and would be classified as felonies in most other States.

Maryland. For each offense, an upper limit to the sentence length is prescribed by statute. The judge imposes a fixed indeterminate sentence that may not exceed that limit. For some offenses the statute also prescribes a lower limit, and the imposed sentence may not be less than that amount. Release prior to expiration of the sentence can take place through action of the parole commission, commutation of the sentence by the Governor, or court order.

Data were provided in a report by the Maryland Statistical Analysis Center.[11] The data cover four jurisdictions in which sentencing guidelines have been tested since June 1981. The four jurisdictions (Harford, Montgomery, and Prince George's counties and Baltimore City) account for 60% of the reported serious crimes in the State and 68% of the commitments to prison. The preguidelines sample consists of 339 cases that were selected randomly from those cases that had sentencing dates within an 8 month period in 1980-81, and for which (a) there had been a conviction on only one count and (b) a presentence investigation (PSI) report had been prepared. The postguidelines data set consists of the 2,928 single-

Table 6. Determinate sentences, average (mean) sentence length in months

	California, 1979 and 1981		Illinois, 1978-82		North Carolina, 1981-82 Statewide sample	
	Number of incarcerative sentences	Sentence length (months)	Number of incarcerative sentences	Sentence length (months)	Number of incarcerative sentences	Sentence length (months)
Serious violent crimes[a]	**8,981**	**59 mos.**	**14,641**	**102 mos.**	•	•
Murder[b]	180	91	820	332	165	453 mos.
Attempted murder	107	130	767	161	•	•
Manslaughter	730	60	701	61	144	82
Robbery	5,418	56	8,919	89	544	135
Aggravated assault	1,730	48	2,253	40	114	38
Serious property crimes[c]	•	•	•	•	•	•
Burglary	5,973	31	10,494	47	1,352	47
Larceny	1,228	27	6,458	33	350	38
Auto theft	976	26	•	•	•	•
Drug crimes	**1,646**	**36**	•	•	**157**	**40**

Note: Data on life sentences not available.
• Data not available.
[a] Murder, attempted murder, manslaughter, rape, robbery, and aggravated assault.
[b] Includes only second degree murder for California (1979 only) and for North Carolina.
[c] Burglary, larceny, auto theft and arson.

Table 7. New York: Average (mean) sentence lengths in months, by class of felony and offender classification, 1982

	Offender classification						
	Youthful[a]			First offender			
Felony class[b]	Number of incarcerative sentences	Minimum (months)	Maximum (months)	Number of incarcerative sentences	Minimum (months)	Maximum (months)	Number of maximum life imprisonment sentences
All	**203**	**14 mos.**	**43 mos.**	**7,171**	**40 mos.**	**82 mos.**	**390**
A	1	12	36	420	182	87	390
B	38	14	44	1,991	49	128	
C	84	14	43	2,145	29	79	
D	66	13	41	1,985	19	51	
E	14	14	43	630	15	40	

	Offender classification							
	Repeat[c]				All offenders			
	Number of incarcerative sentences	Minimum (months)	Maximum (months)	Number of maximum life imprisonment sentences	Number of incarcerative sentences	Minimum (months)	Maximum (months)	Number of maximum life imprisonment sentences
All	**2,556**	**42 mos.**	**76 mos.**	**105**	**9,930**	**40 mos.**	**79 mos.**	**495**
A	25	243	108	24	446	184	86	414
B	370	91	177	47	2,399	55	133	47
C	504	51	97	19	2,733	33	81	19
D	931	29	58	14	2,982	22	53	14
E	726	19	38	1	1,370	17	39	1

Note: Life sentences not included in computing mean sentence lengths.

[a] Persons classified as youthful offenders generally are sentenced as though the offense had been a Class E felony, regardless of the actual offense.

[b] By statute, there are five classes of felony offenses based on severity of the offense; they are presented in order of decreasing seriousness. Violent and property offenses appear in all classes. The class of a particular offense depends upon factors such as injury or loss to the victim, weapons use, etc.

[c] Includes persons classified as second felony offenders, persistent felony offenders, second violent felony offenders, and persistent violent felony offenders.

count cases (1,760 with PSI's and 1,168 without) for which conviction and sentencing took place from June 1981 through April 1982.

The data provide information on incarceration rates for certain categories of offenses and offenders. Data from the preguidelines sample have not been used in this report because of the small sample size and the restriction of the sample to cases with PSI's.

Minnesota. The judge sets a determinate prison term based on sentencing guidelines that took effect in May 1980. The guidelines use information about the seriousness of the offense and the offender's criminal history to indicate whether the offender should be incarcerated and, if so, the presumptive range of sentence lengths. These ranges are quite narrow. If the judge departs from the guidelines, written justification must be presented. Parole release has been abolished, but the prison stay can be shortened through "good time." When the offender enters prison, a prescribed amount of "good time" is credited that can be reduced or eliminated as the result of unsatisfactory behavior while incarcerated.

The sentencing guidelines were designed to reflect retribution or "just deserts" as the primary aim of sentencing. Other objectives were uniformity in sentencing and avoiding an increase in prison population. The guidelines currently measure criminal history in terms of the number of prior felony convictions, but they are being revised to take into account the severity of these prior offenses.

Data were taken from a report that investigates the impact of the sentencing guidelines.[12] The data show incarceration rates, in terms of the offender's criminal history and the seriousness of the offense, for a preguidelines group of 4,369 persons and a postguidelines group of 5,500 persons. The preguidelines group includes all persons who were convicted of felonies from July 1977 through June 1978; the data are based on a sampling of approximately 50% of that group. The postguidelines group consists of all persons convicted under the guidelines, from their inception in May 1980 until the fall of 1981.

New York. For most felonies, the judge imposes a minimum/maximum indeterminate sentence within limits that are specified by statute for each class and type of offense. The minimum term must be at least 1 year and not more than one-third of the maximum term. The minimum for repeat offenders is generally half of the maximum term. The offender can be considered for parole after serving the minimum term.

New York defines five basic classes of felonies, Class A through Class E, in decreasing order of seriousness. Classes B through E are subdivided into violent and nonviolent felonies with different statutory sentence ranges. For a number of relatively serious offenses, imprisonment is mandatory, especially when the offender has a prior record of felony convictions.

Under New York law, there are different sentencing provisions for each of six categories of offenders. For a first offender, no special provisions apply; sentencing is governed only by the offense. A "youthful offender" is subject to relatively mild sentencing provisions under certain circumstances. Generally a youthful offender is sentenced as though the offense had been a Class E felony, regardless of the actual offense. The other four categories cover persons with prior felony convictions (second felony offender, persistent felony offender, second violent felony offender, persistent violent felony offender) and are subject to much harsher penalties.

The data for New York were provided by the New York Statistical Analysis Center and cover 22,287 felony convictions in calendar year 1982 that resulted from 1982 felony indictments. This is a subset of all 29,330 felony convictions in 1982, and could be biased by underrepresentation of cases with long processing times. The data include incarceration rates and sentence lengths broken down by offense, class of felony, and offender category. The unit of count is the indicted defendant; if there were several indictments of the same person, they are included separately in the data.

North Carolina. North Carolina used indeterminate sentencing until July 1981. The judge imposed a maximum sentence that could not exceed an upper limit prescribed by statute for each offense. In many cases, a minimum sentence also was imposed. There was wide parole discretion and generous provision for earning "good time" credit. In most cases, an inmate became eligible for parole after serving either the imposed minimum sentence or a fifth of the statutory upper limit, whichever was less.

Determinate sentencing was instituted by legislation that took effect on July 1, 1981. A presumptive sentence length is provided by statute for each offense. The court must impose a fixed determinate sentence of that length unless there are significant mitigating or aggravating circumstances. "Good time" credit can be accumulated but, until July 1984, there was no discretionary parole except for certain youthful offenders. Discretionary parole release was partially reinstated on July 1, 1984. Certain offenders considered to be good risks can be released into rigidly supervised community programs after serving at least half of their sentences.

Table 8. Illinois: average (mean) sentence length in months, by class of felony, 1978-82

Felony[a] class	Minimum/maximum indeterminate sentences: Number of incarcerative sentences	Minimum (months)	Maximum (months)	Determinate sentences: Number of incarcerative sentences	Sentence length (months)
All felonies	**4,429**	**80 mos.**	**173 mos.**	**41,317**	**67 mos.**
M (murder)	347	495	1,047	820	332
X	1,111	100	194	8,227	132
1	141	65	156	1,816	83
2	1,723	22	62	15,682	48
3	983	23	55	12,750	34
4	124	16	39	2,022	24

Note: Data on life sentences not available.

[a] By statute, there are six classes of felony offenses that are based on the severity of the offense; they are presented in order of decreasing seriousness. In general, a particular class can include property and violent crimes. The class of a particular offense depends upon factors such as injury or loss to the victim, weapons use, etc.

A report evaluating the change to determinate sentencing provided data on incarceration rates and sentence lengths for a number of offenses, based on statewide samples of several thousand persons each in 1979 and in 1981-82, before and after the determinate sentencing legislation became effective.[13]

Oklahoma. The judge imposes a fixed indeterminate sentence that is the maximum amount of time for which the offender can be imprisoned. The sentence may not exceed an upper limit that is stipulated by statute for each offense. The actual date of release is determined by the parole board, which can release the offender at any time before the expiration of the imposed sentence. The initial parole hearing must take place before a third of the imposed sentence has been served.

Data covering each year from 1978 through 1982 were provided by the Oklahoma Statistical Analysis Center. The data include information on incarceration rates and sentence lengths for specific offenses. The offenses are those for which charges were filed originally; changes due to plea bargaining are not reflected in the data. A case-based system is used; that is, each charge is covered separately in the data, and so a person sentenced on more than one charge will account for several data entries.

Oregon. The judge imposes a fixed indeterminate sentence that may not exceed the maximum prescribed by statute for each class of offense. The sentence is the maximum duration of imprisonment. The parole board sets the actual release date, using guidelines that it has developed.

A report by the Oregon Statistical Analysis Center provided information on incarceration rates in 1979 for certain categories of offenses, broken down by whether or not the most serious conviction offense was the same as the most serious offense for which the person had been arrested.[14]

Pennsylvania. The judge imposes a minimum/maximum indeterminate sentence. For sentences with a maximum of 2 years or more, the parole board determines the actual date of release, but release cannot occur before the expiration of the minimum sentence. Offenders generally are released at the expiration of the minimum term. When the maximum term is less than 2 years, release by court order may take place prior to the expiration of the minimum term.

The Pennsylvania Statistical Analysis Center provided data in a tabulation entitled Pennsylvania Judicial Sentencing Practices, 1978-1981. Information is given on incarceration for specific offenses. The data for 1981 are used in this report; these data are more complete and are estimated to be more reliable than the data for earlier years.

In addition to felonies, some offenses are included that are classified as misdemeanors under Pennsylvania law, but are punishable by more than 1 year in prison and would be considered felonies in many other States.

The data do not include those cases in which Accelerated Rehabilitative Disposition (ARD) was used. This is a type of probation that can be imposed by the court without a formal finding of guilt. It usually is used with nonviolent first offenders. If this option were not available, most ARD cases probably would have resulted in convictions with no incarceration.

Washington. During the period covered by the data in this report, Washington used fixed indeterminate sentencing. The law defined three classes of felonies, each with a prescribed upper limit on sentence length. Where a prison sentence was imposed, it was for a fixed indeterminate term equal to the statutory maximum. The paroling authority determined the actual sentence length and the release date. The only restriction was that period of imprisonment could not exceed the statutory maximum sentence length.

A determinate sentencing law was enacted in July 1984. It provides for judicial consideration of the specific offense characteristics and the offender's prior record in selecting a determinate sentence from within a narrow statutory range.

The Washington Statistical Analysis Center provided data covering incarceration rates for certain offenses in 1971-82.

Wyoming. The judge sets a minimum/maximum indeterminate sentence within limits fixed by statute for each offense. The parole board establishes the actual release date from within the range of the sentence.

Data were furnished by the Wyoming Statistical Analysis Center, covering persons sentenced from January 1, 1981, through June 30, 1984. The data are offender-based; each convicted person is represented once in the data. Where a person was convicted on several charges, the data cover the most serious charge. The data were taken from two independent information systems, one covering probation and the other imprisonment. As a result, any person receiving a sentence other than probation or imprisonment is not covered by the data. Since other types of sentences are rarely used in Wyoming, these omissions are not believed to be significant.

Bureau of Justice Statistics Special Reports are prepared principally by BJS staff and edited by Jeffrey L. Sedgwick, deputy director for data analysis. Marilyn Marbrook, publications unit chief, administers their publication, assisted by Millie J. Baldea and Joyce M. Stanford. This report was written by Herbert Koppel.

October 1984, NCJ-95399

Acknowledgments

This report could not have been written without the cooperation and help of the directors and staffs of the State criminal justice Statistical Analysis Centers and other State personnel who provided the data and aided in its interpretation:

California: Steve Crawford and William C. Pannell
Connecticut: Gerald Stowell and Gary Lukasewski
Delaware: Michael H. Rabasca
Illinois: Larry Dykstra and Anna Aylward
Iowa: Paul Stageberg
Maryland: Catherine H. Conly and Janet B. Rosenbaum
Minnesota: Stephen Coleman
New York: Richard Rosen and Thomas J. Harig
North Carolina: David E. Jones and Thomas Havener
Oklahoma: Jon Steen and Steven P. Davis
Oregon: Clinton Goff and James Paul Heuser
Pennsylvania: Phillip J. Renninger and Richard S. Morelli
Washington: John O'Connell
Wyoming: David J. Roberts

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[3] Bureau of Justice Statistics Bulletin, Setting Prison Terms, August 1983, NCJ-76218, figure 2.

[4] These States include California, Colorado, Connecticut, Illinois, Indiana, Maine, Minnesota, New Mexico, and North Carolina. See Bureau of Justice Statistics Bulletin, Probation and Parole, 1982, September 1983, NCJ-89874.

[5] See footnote 1 .

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[12] See footnote 7.

[13] See footnote 9.

[14] See footnote 10.

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